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Federal Register

Monday
August 30, 1999

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 7216 of August 25, 1999

Minority Enterprise Development Week, 1999

By the President of the United States of America

A Proclamation

Throughout our history, America's minority entrepreneurs have contributed to the strength of our economy and the quality of our national life. In the 18th and 19th centuries, as farmers and fur traders, shipwrights and sea captains, barbers and bankers, they forged better lives for themselves, their families, and their neighbors. Often facing prejudice and discrimination, they nonetheless succeeded in creating businesses that energized their communities and helped to build a dynamic new society.

Today, minority business owners are branching out from predominantly retail and service industries into the fields of manufacturing, transportation, construction, energy, and technology, helping to power the longest peacetime economic expansion in our Nation's history. Producing goods and services that generate new jobs and spur investment, minority business owners have played a vital role in building an economy with nearly 19 million new jobs, wages rising at twice the rate of inflation, and the lowest peacetime unemployment rate since 1957.

All Americans can be proud that we have eliminated many of the obstacles that in the past hindered minority entrepreneurs from contributing the full value of their talents to our society. However, while many minority business owners are enjoying success, many still face barriers that keep them from competing on a level playing field. We must continue to build on the combined efforts of the private sector and government to ensure that minority-owned businesses have access to the capital, customers, and services that will enable them to succeed in high technology and other rapidly growing sectors.

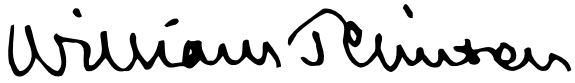
Through my Administration's New Markets Initiative, we are building partnerships between business and government to encourage investments in areas that have not attracted investments in the past: inner cities, rural regions, and Indian reservations. We are striving to ensure that our Nation's economic expansion—which has benefited millions of Americans—will reach people who have been left behind for decades.

We are also working to help minority-owned firms harness the enormous power of the Internet. The Minority Business Development Agency (MBDA) at the Department of Commerce, together with the Small Business Administration (SBA), provide minority-owned businesses with the tools they need to succeed in the Information Age. These efforts range from interactive educational courses on the fundamentals of E-commerce to the creation of Phoenix-Opportunity, an automatic electronic bid-matching system that notifies firms of opportunities through the Internet. Similarly, SBA's Pro-Net system provides contracting officers and small and minority-owned businesses with an electronic gateway to procurement opportunities and information.

During Minority Enterprise Development Week, as we honor the many minority businessmen and women whose energy, spirit, and creativity have strengthened our economy and enriched our country, let us rededicate ourselves to nurturing the dreams and talents of all Americans and to realizing the limitless possibilities of our free enterprise system.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 19 through September 25, 1999, as Minority Enterprise Development Week, and I call on all Americans to join together with minority business entrepreneurs across the country in appropriate observances.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of August, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.



[FR Doc. 99–22645
Filed 8–27–99; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7217 of August 25, 1999

Small Manufacturing Week, 1999

By the President of the United States of America

A Proclamation

America's free enterprise system is continually energized by the skill, vision, and exceptional performance of our Nation's small manufacturers—those who employ fewer than 500 employees. Though small in size, these companies make enormous contributions to our economy and provide our society and the world with high-quality manufactured goods. More important, small manufacturers are a vital source of new jobs— almost 1 million between 1992 and 1996—and provide a livelihood for nearly 12 million Americans.

We live in an age dominated by information and technology, where the global marketplace grows ever more complex and interdependent. As large manufacturers expand their reliance on smaller firms for parts and services, the performance of small manufacturers becomes increasingly important to the competitiveness of America's manufacturing sector.

My Administration, working with the Congress and State governments, has strived to ensure that these small firms have access to the resources, technology, expertise, and training they need to realize their highest potential. By passing two consecutive balanced budgets and signing into law the Taxpayer Relief Act of 1997, we have helped to reduce interest rates, ease the tax burden on small firms, and encourage investment and growth. The Small Business Administration, through its vigorous lending and loan guaranty efforts, has improved access to capital so that small manufacturing firms and other small businesses can modernize, expand, and invest in worker training.

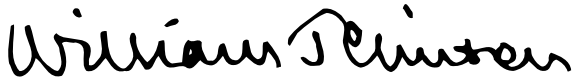
The Manufacturing Extension Partnership (MEP) of the Department of Commerce, which is celebrating its tenth anniversary this year, gives small manufacturers a solid foundation on which to build innovative ideas and products. With a network of more than 70 nonprofit centers, the MEP serves small manufacturers in all 50 States, the District of Columbia, and Puerto Rico, providing access to the newest technology, manufacturing processes, and business practices. The MEP's local centers offer personalized guidance to manufacturers on issues ranging from business to technology solutions. And because these centers are linked together through the Department of Commerce's National Institute of Standards and Technology, even the smallest manufacturing firms can enjoy instant access to the most advanced national resources.

Most important, we are continuing to invest in education and training to give America's working men and women the skills and knowledge they need to succeed in the jobs of the 21st century. The Workforce Investment Act of 1998, which I was pleased to sign into law last year, provides skill grants directly to workers so they can choose the kind of training they want and where they want to obtain it.

As we observe Small Manufacturing Week, let us pay tribute to America's more than 385,000 small manufacturing firms whose commitment to hard work and excellence has helped set our country on a steady course for continued growth and prosperity.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 19 through September 25, 1999, as Small Manufacturing Week, 1999. I invite all Americans to observe this week with appropriate ceremonies, activities, and programs that recognize the achievements of our Nation's small manufacturers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of August, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.



[FR Doc. 99–22646
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Rules and Regulations

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OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2636

RINs 3209–AA00 and 3209–AA13

Civil Monetary Penalties Inflation Adjustments for Ethics in Government Act Violations

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: In accordance with the 1990 Federal Civil Penalties Inflation Adjustment Act as amended by the 1996 Debt Collection Improvement Act, these final rule amendments incorporate 10% inflation adjustments for each of the five civil monetary penalties provided in the Ethics in Government Act, as reflected in the executive branchwide financial disclosure and outside employment/activities regulations promulgated by OGE.

EFFECTIVE DATE: September 29, 1999.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics; telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION:

Background

The Office of Government Ethics is issuing these final rule technical amendments as mandated by the Debt Collection Improvement Act of 1996, section 31001 of Pub. L. 104–134, 110 Stat. 1321, to adjust for inflation the civil monetary penalties (CMP) provided in the Ethics in Government Act of 1978 as amended (the ''Ethics Act''), 5 U.S.C. appendix. As explained below, all of the Ethics Act penalties are being raised by 10%, effective September 29, 1999. These adjustments will bring the Ethics Act CMPs into line with inflation since they were last adjusted in the 1989 Ethics Reform Act, thereby promoting compliance with the law.

The Debt Collection Improvement Act revised sections 4 and 5 of, and added a new section 7 to, the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, to require Federal agencies to regularly adjust certain statutory CMPs for inflation. As amended, that statute requires each Federal agency to make an initial inflation adjustment by regulation published in the **Federal Register** for all applicable CMPs provided by law within its jurisdiction, and to make further adjustments by regulation at least once every four years thereafter for these penalty amounts. The inflation adjustments are to be rounded, in pertinent part, to the nearest multiple of $1,000 for CMPs of greater than $1,000 but less than or equal to $10,000, such as those provided in the Ethics Act, subject to a limitation on any initial increase of no more than 10% of the penalty.

Under the Debt Collection Improvement Act, the increased penalties only apply to violations that occur after the increase takes effect, but no earlier than 180 days after the date of enactment (April 26, 1996) of that law, or October 23, 1996. In the case of the Ethics Act CMPs, the inflation adjustments will not become effective until this rulemaking takes effect on September 29, 1999.

In addition, OGE notes that a separate Department of Justice rulemaking also being published in today's issue of the **Federal Register**, includes, as part of a broader set of CMP inflation adjustments, for that Department's Civil Division (which brings Ethics Act CMP enforcement actions) new regulatory provisions being added in a new part 85 of 28 CFR which provide for the same penalties, as adjusted by the same amount and effective on the same date as are also provided for herein. The Office of Government Ethics and the Justice Department have, therefore, coordinated in issuance of these two rulemakings.

The Office of Government Ethics emphasizes that only Ethics Act violations occurring on or after the effective date of this rulemaking, September 29, 1999, will be subject to the increased civil monetary penalty amounts. For any violations occurring prior to that date, the CMP amounts originally specified in the Ethics Act as amended by the 1989 Ethics Reform Act would apply. The modified OGE regulatory provisions will reflect both the original and adjusted CMP amounts. The Office of Government Ethics will notify departments and agencies by memorandum of this rulemaking action and its effect.

Ethics Act CMPs

There are five civil monetary penalties provided for in the Ethics in Government Act, as amended inter alia by the 1989 Ethics Reform Act. The law provides for a $10,000 maximum civil penalty that can be assessed by an appropriate United States district court, based upon a civil action brought by the Department of Justice, for the following four types of violations: knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report; knowing and willful breach of a qualified trust by trustees and interested parties; misuse of a public report; and violation of outside employment/activities provisions. In the case of outside employment/activities violations, an alternative assessable maximum penalty, if greater, is the amount of compensation received (if any) by an individual for prohibited conduct. That alternative penalty is indirectly affected by the increase in the applicable set dollar CMP in this rulemaking. In addition, a $5,000 maximum civil monetary penalty is specified in the Ethics Act for negligent breach of a qualified trust by trustees and interested parties. See sections 102(f)(6)(C)(i) and (ii), 104(a), 105(c)(2) and 504(a) of the Ethics Act, 5 U.S.C. appendix, sections 102(f)(6)(C)(i) and (ii), 104(a), 105(c)(2) and 504(a). These penalties are reflected in 5 CFR 2634.701(b), 2634.702 (a) and (b), and 2634.703 of OGE's executive branchwide financial disclosure regulation and 5 CFR 2636.104(a) of OGE's executive branchwide covered noncareer employee outside employment/activities regulation.

Late Filing Fee Not a CMP

The Office of Government Ethics notes that it has determined, after consultation with the Department of Justice, that the $200 late filing fee for

public financial disclosure reports that are more than 30 days overdue (see section 105(d) of the Ethics Act, 5 U.S.C. appendix, section 105(d), and 5 CFR 2634.704 of OGE's regulations thereunder) is not a civil monetary penalty as defined under the Federal Civil Penalties Inflation Adjustment Act, as amended. Therefore, that fee is not being adjusted and will remain at its current amount of $200.

Calculation of Inflation Adjustments

The Federal Civil Penalties Inflation Adjustment Act, as amended by the Debt Collection Improvement Act, requires Federal agencies to adjust CMPs within their respective jurisdictions by the cost-of-living adjustment set forth in section 5 of that law. The cost-of-living adjustment is defined as the percentage by which the U.S. Department of Labor's Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the penalty was last set or adjusted pursuant to law, subject to the rounding formula and initial 10% maximum adjustment noted above. The Ethics Act CMPs were last set by statute in the Ethics Reform Act of 1989 (with the CMP provisions becoming effective on January 1, 1991) and have not previously been administratively adjusted for inflation. The CPI for June 1989 was 371.7, while that for June 1998 was 488.2. Thus, the increase was just over 31% (additionally, OGE notes that the CPI for June 1991 was 407.3, which yields an increase to June 1998 of just under 20%). Therefore, this first statutorily required adjustment of the five Ethics Act CMPs is limited to the maximum 10% increase specified by the Debt Collection Improvement Act.

Applying the 10% increase to the Ethics Act civil monetary penalties, OGE is amending its above-noted regulatory provisions, effective September 29, 1999, to increase each of the four $10,000 maximum penalties to a maximum of $11,000 and the one $5,000 maximum penalty to a maximum of $5,500.

Conclusion

The Office of Government Ethics, in coordination with the Justice Department will also make future inflation adjustments in accordance with the statutory formula under the Federal Civil Penalties Inflation Adjustment Act, as amended. That law provides that civil monetary penalties are to be adjusted for inflation at least once every four years after the initial adjustment.

Finally, OGE is making a couple of minor clarifying revisions in the amended sections of its regulations subject to the CMP adjustments, as set forth below.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), as Director of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because these amendments, which concern matters of agency organization, procedure and practice, are being adopted in accordance with statutorily mandated inflation adjustment procedures of the 1990 Federal Civil Penalties Inflation Adjustment Act, as amended by the 1996 Debt Collection Improvement Act. It is also in the public interest that the adjusted rates for civil monetary penalties under the Ethics in Government Act become effective as soon as possible in order to maintain their deterrent effect. However, OGE notes that, in order to provide an appropriate period for notification to executive branch departments and agencies and their employees, these technical amendments will only take effect 30 days after the date of publication of this rulemaking in the **Federal Register**, on September 29, 1999.

Executive Order 12866

In promulgating these technical amendments to its regulations, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have not been reviewed by the Office of Management and Budget under that Executive order because they are not deemed ''significant'' thereunder since they are limited to the adoption of statutorily mandated inflation adjustments without interpretation.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees and their agencies.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this amendatory rulemaking does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2636

Conflict of interests, Government employees, Penalties.

Approved: August 6, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR parts 2634 and 2636 as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2634.101 is revised to read as follows:

§ 2634.101 Authority.

The regulation in this part is issued pursuant to the authority of the Ethics in Government Act of 1978, as amended; 26 U.S.C. 1043; the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996; and Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731 of October 17, 1990.

3. Section 2634.701 is amended by revising the last sentence of paragraph (b) to read as follows:

§ 2634.701 Failure to file or falsifying reports.

* * * * *

(b) * * * The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed $10,000, as provided by section 104(a) of the Act, for any such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to $11,000 for any such violation occurring on or after that date, in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

* * * * *

4. Section 2634.702 is amended by revising the respective last sentences of paragraphs (a) and (b) to read as follows:

§ 2634.702 Breaches by trust fiduciaries and interested parties.

(a) * * * The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed $10,000, as provided by section 102(f)(6)(C)(i) of the Act, for such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to $11,000 for any such violation occurring on or after that date, in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(b) * * * The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed $5,000, as provided by section 102(f)(6)(C)(ii) of the Act, for any such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to $5,500 for any such violation occurring on or after that date, in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

5. Section 2634.703 is amended by revising the second sentence to read as follows:

§ 2634.703 Misuse of public reports.

* * * The court in which the action is brought may assess against the person a civil monetary penalty in any amount, not to exceed $10,000, as provided by section 105(c)(2) of the Act, for any such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to $11,000 for any such violation occurring on or after that date, in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

* * *

PART 2636—[AMENDED]

6. The authority citation for part 2636 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

7. Section 2636.104 is amended by revising paragraph (a) to read as follows:

§ 2636.104 Civil, disciplinary and other action.

(a) *Civil action.* Except when the employee engages in conduct in good faith reliance upon an advisory opinion issued under § 2636.103 of this subpart, an employee who engages in any conduct in violation of the prohibitions, limitations and restrictions contained in this part may be subject to civil action under 5 U.S.C. app. 504(a) and a civil monetary penalty of not more than $10,000 for any such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to $11,000 for any such violation occurring on or after that date, in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, or the amount of the compensation the individual received for the prohibited conduct, whichever is greater.

* * * * *

[FR Doc. 99–22348 Filed 8–27–99; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 761

RIN 0560–AF70

Small Hog Operation Payment Program

AGENCY: Farm Service Agency, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations for the Small Hog Operations Payment (SHOP) Program. Enactment of the 1999 Emergency Supplemental Appropriations Act has made more funds available for the SHOP program. This will allow the Department to spend up to $175 million (including the $50 million allocated in the original, February 10, 1999, (64 FR 6495) interim rule). Payments will be made to producers in the order in which they were filed, to the extent that funds are available. As amended in this rule, the SHOP program regulations would allow hog operations to receive up to $5,000 in total payments at a total rate of $10 per each eligible slaughter hog and $3.60 for eligible feeder pigs sold during the relevant marketing period. Also, this rule expands the program's eligibility provisions to allow operations to qualify so long as the operation did not sell 2,500 or more hogs during the relevant marketing period. In the original rule, the limit was set at less than 1,000 hogs. SHOP program payments already received by an eligible operation will be deducted from the expanded eligible amount an operation may have under the new rules.

DATES: Effective August 26, 1999. Comments on this rule must be received by September 29, 1999, in order to be assured of consideration. Comments on the information collections in this rule must be received by October 29, 1999, in order to be assured of consideration.

ADDRESSES: Comments should be mailed to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, 1400 Independence Avenue, SW, Washington, DC 20250–0512 or Candace Thompson, Branch Chief, PSD, FSA, USDA, at the same address; telephone: (202) 720–7901; e-mail: candy__thompson@wdc.fsa.usda.gov. Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095 South Building, Washington, DC, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this interim rule is available on the PSD home page at http://www.fsa.usda.gov/dafp/psd/.

FOR FURTHER INFORMATION CONTACT: Candace Thompson, (202) 720–6689.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is in conformance with Executive Order 12866 and has been determined to be economically significant and therefore has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not

applicable to this rule because the Farm Service Agency is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement is not needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any legal action may be brought regarding determinations of this rule, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published June 24, 1983 (48 FR 29115).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, FSA has submitted an emergency information collection request (ICR) to OMB for the approval of the Small Hog Operation Payment Program report as necessary for the proper functioning of the program.

Title: Small Hog Operation Payment Program.

OMB Control Number: 0560-0193.

Type of Request: Reinstatement with change.

Abstract: Hog operations are eligible to receive direct payments provided they make certifications that attest to their eligibility to receive such payments. These operations must certify: (1) The number of hogs marketed; (2) that the hogs were marketed during the last 6 months of 1998; (3) that the hogs were not marketed under a fixed-price or cost-plus contract; and (4) that the operation was still in the business of farming at the time of the SHOP Program request. The information collection will be used by FSA to approve Form FSA–1042 or to determine the program eligibility of the hog operation in accordance with this subpart. FSA considers the information collected essential to prudent eligibility determinations and payment calculations. The eligibility requirements have been established to target the direct payments towards smaller operations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Hog Operations.

Estimated Number of Respondents: 55,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 13,750 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Grady Bilberry, Director, Price Support Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW, Washington, DC 20250–0512, telephone (202) 720–7901.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

On February 10, 1999, regulations were published, by an interim rule (64 FR 6495), to establish the SHOP program.

The SHOP program utilizes funds available under clause (3) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c). That clause permits Section 32 funds to be used to ''[r]eestablish farmers'' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption.'' However, by statute, normally no more than 25 percent of the available Section 32 funds can be used in a fiscal year for any one agricultural commodity or the products therefrom.

Taking into consideration that limit, $50 million in assistance were made available under the original SHOP program rule. Subsequently, however, the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31, enacted May 21, 1999) appropriated $145 million to be added to the Section 32 fund and allowed the Secretary, for fiscal year 1999, to waive the 25 percent limitation. Because of the availability of these additional funds, it has been determined that the SHOP program's eligibility provisions should be expanded and its payment rates increased. Before, a hog operation could, up to February 12, 1999, sign-up to qualify for up to $2,500 in SHOP program payments at $5 per eligible slaughter hog and $1.80 per eligible feeder pig hog, for hogs and feeder pigs marketed in the period from July 1, 1998 through December 31, 1998. However, no payment would be made if the operation marketed 1,000 or more head during that period. Under the new provisions of this interim rule, sign-up has been extended through September 24, 1999, the $2,500 has been increased to $5,000, the $5 payment rate increased to $10, the $1.80 payment rate increased to $3.60, and the maximum allowable marketings raised from less than 1,000 to less than 2,500. Payments already received will be deducted from the new benefit calculations and payments will continue to be subject to the proviso that, if a hog operation is owned by one or more individuals who have a gross revenue of $2.5 million or more in farming and ranching operations in calendar year 1998, the payment to the operation will be reduced by a pro rata amount based upon the ownership interest of such entity or individual. All other eligibility requirements as specified in the original rule also remain unchanged. The new eligibility

requirements are consistent with the purposes of the original program, some of the comments in response to the original rule, and with the available funding. The regulations specify that no more than $175 million in total may be expended under the SHOP program with the claims of old claimants given a first priority. For new claimants, the claims will be handled first-come, first-served, to the extent the $175 million total has not been expended. However, it is expected that the total claims will be considerably below that amount.

Hog operations may apply in person at county FSA offices during regular business hours by the close of business September 24, 1999, and at that time complete the application Form FSA–1042. Hog operations who applied for and received payment under the February 1999 SHOP program interim rule do not need to re-apply. Additional payments will be issued based upon the original application. Hog operations needing an application may request the SHOP program application by mail, telephone, or facsimile from their designated county FSA office, or obtain the application via the Internet. The Internet website is located at www.fsa.usda.gov/dafp/psd/. The completed application, Form FSA–1042, must be received by the hog operations' local county FSA office by the September 24 deadline and can be returned in person, by mail, or by facsimile.

Because of the poor market conditions that have recently faced hog operations as specified in the February rule, particularly that have faced small hog operations, a delay in making this assistance available would be contrary to the public interest and the purpose of the statute authorizing additional assistance. Likewise and for those reasons it has been determined that to the extent that Section 801 of the Small Business Regulatory Enforcement Fairness Act of 1996 would otherwise apply, delaying this rule for Congressional review would be contrary to the public interest. Accordingly, it has been determined that this rule will be made effective immediately upon filing for public inspection at the Office of the Federal Register.

List of Subjects in 7 CFR Part 761

Direct payments to small hog operations, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Part 761 is amended to read as follows:

PART 761—SMALL HOG OPERATION PAYMENT PROGRAM

1. The authority citation for part 761 continues to read as follows:

Authority: 7 U.S.C. 612c.

2. Amend § 761.4 by removing ''February 12, 1999'' and adding in its place ''September 24, 1999''.

3. Amend § 761.5 by removing ''1,000'' and adding in its place ''2,500''.

* * * * *

4. Revise § 761.6 to read as follows:

§ 761.6 Rate of payment and limitations on funding.

(a) Benefits under this part may be made to hog operations for the quantity of eligible slaughter hogs and feeder pigs actually marketed during the marketing period in accordance with the limitations set forth in this section. Payments will be calculated by operation and shall be made in an amount determined by:

(1) Multiplying $3.60 by the number of eligible feeder pigs marketed during the marketing period; plus

(2) Multiplying $10 by the number of eligible slaughter hogs marketed during the marketing period;

(3) Limiting the payment per hog operation otherwise calculated under paragraphs (a)(1) and (2) of this section to $5,000; and

(4) Reducing the amount due as calculated under paragraphs (a)(1) through (3) of this section by amounts previously paid under this part based on marketings in the same period and, for claims filed after February 12, 1999, by reducing the payment further to zero as necessary to insure subject to paragraph (c), that the total payments under this part do not exceed $175 million.

(b) Producers who filed an application under this part prior to February 12, 1999, do not need to file another application in order to receive benefits at the increased rates announced in the **Federal Register** published on August 30, 1999. A producer who wishes to amend an application filed prior to February 12, 1999, may file an amended application by the deadline for new applications specified in § 761.4 of this part.

(c) To the extent that $175 million is not sufficient to cover all claims under this part, claims filed on or before February 12, 1999, shall be paid in full for the eligible hogs and feeder pigs which were the subject of that claim. For claims filed after that date, the claims will be paid in the manner deemed appropriate by FSA to assure, to the extent practicable, that the claims are paid in the order in which they are filed, until the available funds are expended at which point no additional claims will be paid.

Signed at Washington, DC, on August 29, 1999.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 99–22484 Filed 8–26–99; 10:09 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 270, 274a, and 280

28 CFR Parts 20, 22, 36, 71, 76, and 85

[AG Order No. 2249–99]

RIN 1105–AA48

Civil Monetary Penalties Inflation Adjustment

AGENCY: Office of the Attorney General, Justice.

ACTION: Final rule.

SUMMARY: In accordance with the requirements of section 4 of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, the United States Department of Justice is publishing this regulation adjusting for inflation the civil monetary penalties assessed or enforced by the Department.

DATES: This rule is effective September 29, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Policy Development, Department of Justice, Room 4258, Main Building, 950 Pennsylvania Avenue, NW., Washington, DC. 20530,(202) 514–8059.

SUPPLEMENTARY INFORMATION:

Background

Why Is the Justice Department Revising Its Civil Monetary Penalties?

The Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410 (Adjustment Act), provides for the regular evaluation of civil monetary penalties to ensure that they continue to maintain their deterrent effect and that penalty amounts due the Federal Government are properly accounted for and collected.

On April 26, 1996, President Clinton signed into law the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104–134. Section 31001 of that Act, also known as the Debt Collection

Improvement Act of 1996 (Improvement Act), amended the Adjustment Act to provide for more effective tools for government wide collection of delinquent debt.

In particular, section 31001(s)(1) of the Improvement Act amended section 4 of the Adjustment Act to require the head of each agency to ''by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency'' and to ''publish each such regulation in the **Federal Register**'' not later than one hundred eighty days after enactment of the Debt Collection Improvement Act of 1996. Subsection (s)(1) also added a new section 7 to the Adjustment Act providing that any increase in a civil monetary penalty made pursuant to this Act shall apply only to violations that occur after the date the increase takes effect.

Is There a Limit on the First Adjustment of These Penalties?

Subsection (s)(2) of the Improvement Act provides that the first adjustment of a civil monetary penalty made pursuant to the amendment in subsection (s)(1) may not exceed 10 percent of such penalty.

How Often Will These Penalties be Adjusted for Inflation?

The adjustment for inflation required by the Adjustment Act must be done every four years. Pursuant to the Improvement Act, the first adjustment was required by October 23, 1996.

What Penalties Imposed Pursuant to the Immigration Reform and Control Act of 1986 Does This Rule Adjust and What Penalties Were Adjusted by a Recently Published EOIR Rule?

This rule adjusts, among other things, penalties listed in 8 CFR part 274a that the Immigration and Naturalization Service (INS) imposes pursuant to 8 U.S.C. 1324a for various specified unlawful acts pertaining to the employment of unauthorized aliens. On January 12, 1999, the Executive Office for Immigration Review (EOIR) issued a rule adjusting civil monetary penalties within its area. 64 FR 7066. The adjustment of EOIR penalties included penalties at 28 CFR 68.52(d) that are imposed pursuant to 8 U.S.C. 1324b for unfair employment practices, including discrimination. The Office of Special Counsel for Immigration Related Unfair Employment Practices, Civil Rights Division, is authorized to seek these penalties at hearings presided over by EOIR Administrative Law Judges. The adjustment of these two sets of penalties by this rule and by the recent EOIR rule maintains parity among fines imposed for violating the employer sanctions and the anti-discrimination provisions of the Immigration Reform and Control Act of 1986.

This rule fulfills the Attorney General's obligations under the Improvement Act with respect to all civil monetary penalties, except those pertaining to EOIR.

Are There Any Related Regulations of Other Federal Agencies That Readers of This Rule Should Consult?

The Office of Government Ethics (OGE) is publishing elsewhere in this issue of the **Federal Register** a rule adjusting for inflation certain Ethics Act and Ethics Reform Act civil monetary penalties that are codified at 5 CFR part 2634 and 5 CFR part 2636. Because the Department's Civil Division brings Ethics Act enforcement actions, the Department and OGE have coordinated the issuance of these regulations. For the convenience of the reader, the Department is including in this rule adjustments to the same Ethics Act and Ethics Reform Act penalties that OGE is making today, in the same amount and effective on the same day as the adjustments contained in the OGE rule. Further, as OGE notes in the preamble to its rule, the Department and OGE have determined that the $200 late filing fee for public financial disclosure reports that are more than 30 days overdue (see section 105(d) of the Ethics Act, 5 U.S.C. app. 105(d) and 5 CFR 2634.704) is not a civil monetary penalty as defined by the Federal Civil Penalties Inflation Adjustment Act, as amended. Therefore, that fee is not being adjusted.

The Department's litigating components bring suit to collect various civil monetary penalties of other agencies as well. The reader should consult the regulations of those other agencies for any inflation adjustments of their penalties.

Are There Any Penalties That Are Not Being Adjusted?

The Department notes that various civil penalties contained in Title 8, Title 21, and Title 28 are *not* being adjusted by this rule because they have been in effect for a short number of years or because the penalty scheme is new. Penalties not being adjusted by this rule will be adjusted, if appropriate, during the next adjustment required by the Debt Collection Improvement Act.

Administrative Procedure Act, 5 U.S.C. 553

The Department finds that good cause exists under 5 U.S.C. 553(b)(B) and (d)(3) for immediate implementation of this final rule without prior notice and comment. This rule is a nondiscretionary ministerial action to conform the amount of civil penalties assessed or enforced by the Department of Justice to the statutorily mandated ranges. The calculation of these adjustments follows the mathematical formula set forth in section 5 of the Adjustment Act.

Regulatory Flexibility Act

The Attorney General in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Only those entities which are determined to have violated Federal law and regulations would be affected by the increase in penalties made by this rule pursuant to the statutory requirement.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Robert Hinchman, Senior Counsel, Office of Policy Development, Department of Justice, Room 4258, Main Building, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, (202) 514–8059.

List of Subjects

8 CFR Part 270

Administrative practice and procedure, Aliens, Employment, Fraud, Penalties.

8 CFR Part 274a

Administrative practice and procedure, Aircraft, Immigration, Law enforcement, Motor carriers, Motor vehicles, Seizures and forfeitures, Vessels.

8 CFR Part 280

Administrative practice and procedure, Immigration, Penalties.

28 CFR Part 20

Crime, Penalties, Research, and Statistics.

28 CFR Part 22

Crime, Juvenile delinquency, Penalties, Privacy, Research, and Statistics.

28 CFR Part 36

Administrative practice and procedure, Alcoholism, Americans with disabilities, Buildings, Business and industry, Civil rights, Consumer protection, Drug abuse, Handicapped, Historic preservation, Penalties, Reporting and recordkeeping requirements.

28 CFR Part 71

Claims, Fraud, Organization and function (Government agencies), Penalties.

28 CFR Part 76

Drug traffic control, Drug abuse, Authority delegations (Government agencies), Penalties.

28 CFR Part 85

Penalties.

Accordingly, for the reasons set forth in the preamble, chapter I of Title 8 and chapter I of Title 28 of the Code of Federal Regulations are amended as follows:

TITLE 8—ALIENS AND NATIONALITY

PART 270—PENALTIES FOR DOCUMENT FRAUD

1. The authority citation for part 270 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1324c; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

2. Section 270.3 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 270.3 Penalties.

* * * * *

(b) * * *

(1) * * *

(ii) To pay a civil penalty as follows:

(A) *First offense.* Not less than $250 and not exceeding $2,000 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act before September 29, 1999, and not less than $275 and not exceeding $2,200, for each fraudulent document or each proscribed activity on or after September 29, 1999.

(B) *Subsequent offenses.* Not less than $2,000 and not more than $5,000 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act before September 29, 1999, and not less than $2,200 and not exceeding $5,500, for each fraudulent document or each proscribed activity occurring on or after September 29, 1999.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

3. The authority citation for part 274a is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

4. Section 274a.8 is amended by revising paragraph (b) to read as follows:

§ 274a.8 Prohibition of indemnity bonds.

* * * * *

(b) *Penalty.* Any person or other entity who requires any individual to post a bond or security as stated in this section shall, after notice and opportunity for an administrative hearing in accordance with section 274A(e)(3)(B) of the Act, be subject to a civil monetary penalty of $1,000 for each violation before September 29, 1999, and $1,100 for each violation occurring on or after September 29, 1999, and to an administrative order requiring the return to the individual of any amounts received in violation of this section or, if the individual cannot be located, to the general fund of the Treasury.

5. Section 274a.10 is amended by revising paragraph (b)(1)(ii) and paragraph (b)(2) introductory text to read as follows:

§ 274a.10 Penalties.

* * * * *

(b) * * *

(1) * * *

(ii) To pay a civil fine according to the following schedule:

(A) First offense—not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom the offense occurred before September 29, 1999, and not less than $275 and not exceeding $2,200, for each unauthorized alien with respect to whom the offense occurred occurring on or after September 29, 1999.

(B) Second offense—not less than $2,000 and not more than $5,000 for each unauthorized alien with respect to whom the second offense occurred before September 29, 1999, and not less than $2,200 and not exceeding $5,500, for each unauthorized alien with respect to whom the second offense occurred on or after September 29, 1999; or

(C) More than two offenses—not less than $3,000 and not more than $10,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred before September 29, 1999, and not less than $3,300 and not exceeding $11,000, for each unauthorized alien with respect to whom the third or subsequent offense occurred on or after September 29, 1999; and

* * * * *

(2) A respondent determined by the Service (if a respondent fails to request a hearing) or by an administrative law judge, to have failed to comply with the employment verification requirements as set forth in § 274a.2(b), shall be subject to a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred before September 29, 1999, and not less than $110 and not more than $1,100 for each individual with respect to whom such violation occurred on or after September

29, 1999. In determining the amount of the penalty, consideration shall be given to:

* * * * *

PART 280—IMPOSITION AND COLLECTION OF FINES

6. The authority citation for part 280 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, and 1330; 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221–223, 226, 227, 230; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

7. Section 280.53 is added to read as follows:

§ 280.53 Civil monetary penalties inflation adjustment.

(a) *In general.* In accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104–34, 110 Stat. 1321, the civil monetary penalties provided by law within the jurisdiction of the Service and listed in paragraph (c) of this section are adjusted as set forth in this section, effective for violations occurring on or after September 29, 1999.

(b) *Calculation of adjustment.* (1) The inflation adjustments described in paragraph (c) of this section were determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty assessed or enforced by the Service by the cost-of-living adjustment as that term is defined by the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410. Any increase so determined was rounded to the nearest—

(i) Multiples of $10 in the case of penalties less than or equal to $100;

(ii) Multiples of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(iii) Multiples of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(iv) Multiples of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(v) Multiples of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(vi) Multiples of $25,000 in the case of penalties greater than $200,000.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the initial adjustment for each penalty is capped at 10%.

(c) *Adjustment to penalties.* The civil monetary penalties provided by law within the jurisdiction of the Service, as set forth in this paragraph (c)(1) through (9), are adjusted in accordance with the inflation adjustment procedures prescribed in section 5 of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410, effective on or after the September 29, 1999 as follows:

(1) Section 231(d) of the Act, Lists of Aliens and Citizen Passengers Arriving or Departing; Record of Resident Aliens and Citizens Leaving Permanently for Foreign Country: from $300 to $330.

(2) Section 234 of the Act, Designation of Ports of Entry for Aliens Arriving by Civil Aircraft: from $2,000 to $2,200.

(3) Section 251(d) of the Act, List of Alien Crewmen; Reports of Illegal Landings: from $200 to $220 for each alien not reported in accordance with § 251; and from $5,000 to $5,500 for use of alien crewman for longshore work in violation of section 251(d).

(4) Section 254(a) of the Act, Control of Alien Crewman: from $500 minimum/$3,000 maximum to $550 minimum/$3,300 maximum.

(5) Section 255 of the Act, Employment on Passenger Vessels of Aliens Afflicted with Certain Disabilities: from $1,000 to $1,100.

(6) Section 256 of the Act, Discharge of Alien Crewman: from $1,500 minimum/$3,000 maximum to $1,500 minimum/$3,300 maximum.

(7) Section 257 of the Act, Bringing Alien Crewmen Into United States with Intent to Evade Immigration Laws: from a $10,000 maximum to a $11,000 maximum.

(8) Section 271(a) of the Act, Prevention of Unauthorized Landing of Aliens: from $3,000 to $3,300.

(9) Section 272(a) of the Act, Bringing in Aliens Subject to Exclusion on a Health-Related Ground: from $3,000 to $3,300.

(10) Section 273(b) of the Act, Unlawful Bringing of Aliens Into United States: from $3,000 to $3,300.

(d) *Identification of sections requiring no adjustment to penalties.* The civil monetary penalties provided by law within the jurisdiction of the Service, as set forth below in paragraphs (d)(1) through (7) of this section require no adjustment:

(1) Section 240B(d) of the Act, Voluntary Departure.

(2) Section 243(c)(1)(A) and (B) of the Act, Penalties Related to Removal.

(3) Section 274C(a)(5) and (a)(6) of the Act, Penalties for Document Fraud.

(4) Section 274D of the Act, Penalties for Failure to Depart.

(5) Section 275(b) of the Act, Entry of Alien at Improper Time or Place.

TITLE 28—JUDICIAL ADMINISTRATION

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

8. The authority citation for part 20 is revised to read as follows:

Authority: 28 U.S.C. 534; Pub. L. 92–544, 86 Stat. 1115; 42 U.S.C. 3711, *et seq.*; Pub. L. 99–169, 99 Stat. 1002, 1008–1011, as amended by Pub. L. 99–569, 100 Stat. 3190, 3196; Pub. L. 101-410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

9. Section 20.25 is amended by revising the first sentence to read as follows:

§ 20.25 Penalties.

Any agency or individual violating subpart B of these regulations shall be subject to a civil penalty not to exceed $10,000 for a violation occurring before September 29, 1999, and not to exceed $11,000 for a violation occurring on after September 29, 1999. * * *

PART 22—CONFIDENTIALITY OF IDENTIFIABLE RESEARCH AND STATISTICAL INFORMATION:

10. The authority citation for part 22 is revised to read as follows:

Authority: Secs. 801(a), 812(a), Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et seq.*, as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, and Pub. L. 98–473); secs. 262(b), 262(d), Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.*, as amended (Pub. L. 93–415, as amended by Pub. L. 94–503, Pub. L. 95–115, Pub. L. 99–509, and Pub. L. 98–473); and secs. 1407(a) and 1407(d) of the Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.*, Pub. L. 98–473; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

11. Section 22.29 is revised to read as follows:

§ 22.29 Sanctions.

Where BJA, OJJDP, BJS, NIJ, or OJP believes that a violation of section 812(a) of the Act or section 1407(d) of the Victims of Crime Act, these regulations, or any grant or contract conditions entered into thereunder has occurred, it may initiate administrative actions leading to termination of a grant or contract, commence appropriate personnel and/or other procedures in cases involving Federal employees, and/or initiate appropriate legal actions leading to imposition of a civil penalty not to exceed $10,000 for a violation occurring before September 29, 1999, and not to exceed $11,000 for a violation occurring on or after September 29, 1999 against any person responsible for such violations.

PART 36—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

12. The authority citation for part 36 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12188(b); Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

13. Section 36.504 is amended by revising paragraph (a)(3) (i) and (ii) to read as follows:

§ 36.504 Relief.

(a) * * *

(3) * * *

(i) Not exceeding $50,000 for a first violation occurring before September 29, 1999, and not exceeding $55,000 for a first violation occurring on or after September 29, 1999; and

(ii) Not exceeding $100,000 for any subsequent violation occurring before September 29, 1999, and not exceeding $110,000 for any subsequent violation occurring on or after September 29, 1999.

* * * * *

PART 71—IMPLEMENTATION OF THE PROVISIONS OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

14. The authority citation for part 71 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 31 U.S.C. 3801–3812; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

15. In § 71.3, the concluding text of paragraphs (a) and (f) are removed, and the introductory text of paragraphs (a) and (f) are revised to read as follows:

§ 71.3 Basis for civil penalties and assessments.

(a) Any person shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each claim listed in paragraphs (a)(1) through (a)(4) of this section made before September 29, 1999, and not more than $5,500 for each such claim made on or after September 29, 1999, if that person makes a claim that the person knows or has reason to know:

* * * * *

(f) Any person shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each statement listed in paragraphs (f)(1) and (f)(2) of this section made before September 29, 1999, and not more than $5,500 for each such statement made on or after September 29, 1999, if that person makes a written statement that:

* * * * *

PART 76—RULES OF PROCEDURE FOR ASSESSMENT OF CIVIL PENALTIES FOR POSSESSION OF CERTAIN CONTROLLED SUBSTANCES

16–17. The authority citation for part 76 is revised to read as follows:

Authority: 5 U.S.C. 301; 21 U.S.C. 844a, 875, 876; 28 U.S.C. 509, 510,; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

18. Section 76.3 is amended by revising paragraph (a) to read as follows:

§ 76.3 Basis for civil penalty.

(a) Any individual who knowingly possesses a controlled substance that is listed in § 76.2(h) in violation of 21 U.S.C. 844a shall be liable to the United States for a civil penalty in an amount of not to exceed $10,000 for each such violation occurring before September 29, 1999, and not to exceed $11,000 for each such violation occurring on or after September 29, 1999.

* * * * *

19. Part 85 is added to read as follows:

PART 85—CIVIL MONETARY PENALTIES INFLATION ADJUSTMENT

Sec.
85.1 In general.
85.2 Calculation of adjustment.
85.3 Adjustments to penalties.

Authority: 5 U.S.C. 301, 28 U.S.C. 503; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

§ 85.1 In general.

(a) In accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 104–410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104–134, 110 Stat. 1321, the civil monetary penalties provided by law within the jurisdiction of the Department of Justice and listed in section 85.3 are adjusted as set forth in this part, effective for violations occurring on or after September 29, 1999.

(b) Reference should be made to regulations of the Immigration and Naturalization Service in title 8 of the Code of Federal Regulations for the adjustment of civil monetary penalties pertaining to immigration matters. In addition, adjustments to civil penalties relating to unauthorized employment of aliens, immigration related unfair employment practices, and civil document fraud are addressed in 28 CFR 68.52.

§ 85.2 Calculation of adjustment.

(a) The inflation adjustments described in § 85.3 were determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty assessed or enforced by the Department of Justice by the cost-of-living adjustment as that term is defined by the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410. Any increase so determined was rounded to the nearest—

(1) Multiples of $10 in the case of penalties less than or equal to $100;

(2) Multiples of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) Multiples of $1000 in the case of penalties greater than $1000 but less than or equal to $10,000;

(4) Multiples of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) Multiples of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) Multiples of $25,000 in the case of penalties greater than $200,000.

(b) Notwithstanding the provisions of paragraph (a) of this section, the initial adjustment for each penalty is capped at 10%.

§ 85.3 Adjustments to penalties.

The civil monetary penalties provided by law within the jurisdiction of the respective components of the Department, as set forth in paragraphs (a) through (d) of this section, are adjusted in accordance with the inflation adjustment procedures prescribed in section 5 of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410, effective on or after September 29, 1999, as follows:

(a) *Civil Division.* (1) 5 U.S.C. App. 4 102(f)(6)(C)(i), Ethics in Government Act of 1978, knowing and willful disclosure, solicitation, or receipt of information with respect to blind trusts: from $10,000 to $11,000.

(2) 5 U.S.C. App. 4 102(f)(6)(C)(ii), Ethics in Government Act of 1978, negligent disclosure, solicitation, or receipt of information with respect to blind trusts: from $5,000 to $5,500.

(3) 5 U.S.C. App. 4 104(a), Ethics in Government Act of 1978, falsification or failure to file required reports: from $10,000 to $11,000.

(4) 5 U.S.C. App. 4 105(c)(2), Ethics in Government Act of 1978, unlawful acquisition or use of public reports: from $10,000 to $11,000.

(5) 5 U.S.C. App. 4 504(a), Ethics Reform Act of 1989, violations of

limitations on outside earned income and employment: from $10,000 to $11,000.

(6) 12 U.S.C. 1833a(b)(1), Financial Institutions Reform, Recovery, and Enforcement Act of 1989, violation: from $1,000,000 to $1,100,000.

(7) 12 U.S.C. 1833a(b)(2), Financial Institutions Reform, Recovery, and Enforcement Act of 1989, continuing violations (per day): minimum from $1,000,000 to $1,100,000; maximum from $5,000,000 to $5,500,000.

(8) 22 U.S.C. 2399b(a)(3)(A), Foreign Assistance Act of 1961, fraudulent claim for assistance: from $2,000 to $2,200.

(9) 31 U.S.C. 3729(a), False Claims Act, violations: minimum from $5,000 to $5,500; maximum from $10,000 to $11,000.

(10) 31 U.S.C. 3802(a)(1), Program Fraud Civil Remedies Act, violation involving false claim: from $5,000 to $5,500.

(11) 31 U.S.C. 3802(a)(2), Program Fraud Civil Remedies Act, violation involving false statement: from $5,000 to $5,500.

(12) 40 U.S.C. 489(b)(1), Federal Property and Administrative Services Act of 1949, violation involving surplus government property: from $2,000 to $2,200.

(13) 41 U.S.C. 55(a)(1)(B), Anti-Kickback Act of 1986, violation involving kickbacks: from $10,000 to $11,000.

(b) *Civil Rights Division.* (1) 18 U.S.C. 248(c)(2)(B), Freedom of Access to Clinic Entrances Act of 1994: nonviolent physical obstruction (first order) from $10,000 to $11,000; (subsequent order) unchanged at $15,000.

(2) 18 U.S.C. 248(c)(2)(B), Freedom of Access to Clinic Entrances Act of 1994: other violations (first order) unchanged at $15,000; (subsequent order) from $25,000 to $27,500.

(3) 42 U.S.C. 3614(d)(1)(C), Fair Housing Act of 1968, as amended in 1988: pattern or practice violation (first order) from $50,000 to $55,000; (subsequent order) from $100,000 to $110,000.

(c) *Criminal Division.* 18 U.S.C. 216(b), Ethics Reform Act of 1989, violation: from $50,000 to $55,000.

(d) *Drug Enforcement Administration.* 21 U.S.C. 961(1), Controlled Substances Import Export Act, transshipment and in-transit shipment of controlled substances: from $25,000 to $27,500.

Dated: August 12, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–22347 Filed 8–27–99; 8:45 am]

BILLING CODE 4410–19–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 734, 736, 742, 743, 748, 750 and 774

[Docket No. 990811216–9216–01]

RIN 0694–AB81

Editorial Clarifications and Revisions to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by making certain editorial revisions and clarifications to simplify portions of the EAR and correct typographical errors.

DATES: This rule is effective August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Frank J. Ruggiero, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: This rule makes the following corrections and clarifications:

1. In paragraph 734.5(a) (Activities of U.S. and foreign persons subject to the EAR), the term ''nuclear explosive devices'' is added.

2. In paragraph 736.2 (b)(3)(ii)(A)(*1*) (General Prohibition Three), a citation is given to clarify when written assurance from an ultimate consignee is needed to export the direct product of technology or software.

3. Paragraph (c)(6)(ii)(D) of Supplement No. 2 to Part 742 (Anti-Terrorism Controls; Iran, Syria and Sudan Contract Sanctity Dates and Related Topics), is corrected by replacing the phrase ''9A994'' with ''9A991.d'' to conform with the Commerce Control List numbering changes made to implement the Wassenaar Arrangement.

4. The heading of paragraph (c)(37) of Supplement No. 2 to Part 742 (Anti-Terrorism Controls; Iran, Syria and Sudan Contract Sanctity Dates and Related Topics), is corrected by replacing the phrase ''ECCN 2B992'' with ''ECCN 2B996'' to conform with the Commerce Control List numbering changes made to implement the Wassenaar Arrangement.

5. In paragraph 743.1(c)(1)(v)(Wassenaar Arrangement), a grammatical correction is made.

6. In the first sentence of paragraph (g)(1) of Supplement No. 2 to Part 748 (Unique License Application Requirements), the citation ''§ 744.4'' is deleted.

7. Supplement No. 4 to Part 748 (Authorities Administering Import Certificate/Delivery Verification (IC/DV) and End-Use Certificate Systems in Foreign Countries), the office title, address, phone and fax number of Australia and Belgium are revised.

8. Paragraph 750.7(i) (Records) is redesignated as 750.7(j), and new language is added to paragraph 750.7(i) which clarifies that existing license conditions are terminated when License Exceptions become available or if a product can be exported or reexported without a license.

9. In Category 0 to part 774 (Nuclear Materials, Facilities, and Equipment (And Miscellaneous Items)), the first Reason for Control for ECCN 0A984 is corrected to include shotguns with a barrel length equal to 18 inches.

10. In Supplement No. 2 to part 774 (General Technology and Software Notes), the phrase ''License Exception OTS'' in the third paragraph of Note No. 1 is corrected to read ''License Exception TSU.''

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527) August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 FR 44101).

Rulemaking Requirements

1. This final rule has been determined to be not significant for the purposes of Executive Order 12866.

2. Not withstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collection has been approved by the Office of Management and Budget under control numbers 0694–0088, 0694–0023, and 0694–0106. There are neither additions nor subtractions to these collections due to this rule.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism

assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act requiring notice of proposed Rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed Rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed Rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Frank J. Ruggiero, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Foreign trade, Inventions and patents, Research, Science and technology.

15 CFR Part 736

Exports, Foreign trade.

15 CFR Part 742

Exports, Foreign trade, Terrorism.

15 CFR Parts 743, 748, and 750

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 734, 736, 742, 743, 748, 750 and 774 of the Export Administration Regulations (15 CFR Parts 730–774) are amended as follows:

PART 734—[AMENDED]

1. The authority citation for 15 CFR Part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

2. Section 734.5 is amended by revising the phrase ''proliferation of chemical or biological weapons or of missile technology as described in § 744.6 of the EAR and'' in paragraph (a) to read ''proliferation of nuclear explosive devices, chemical or biological weapons, missile technology as described in § 744.6 of the EAR, and''.

PART 736—[AMENDED]

3. The authority citation for 15 CFR Parts 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

4. Section 736.2 is amended by revising paragraph (b)(3)(ii)(A)(*1*), to read as follows:

§ 736.2 General prohibitions and determination of applicability.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(A) * * *

(*1*) They are the direct product of technology or software that requires a written assurance as a supporting document for a license, as defined in paragraph (o)(3)(i) of Supplement No. 2 to part 748 of the EAR, or as a precondition for the use of License Exception TSR at § 740.6 of the EAR, and

* * * * *

PART 742—[AMENDED]

5. The authority citation for 15 CFR Part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

6. Supplement No. 2 to part 742 is amended by revising paragraph (c)(6)(ii)(D), to read as follows:

Supplement No. 2 to Part 742—Anti-Terrorism Controls; Iran, Syria, and Sudan Contract Sanctity Dates and Related Policies

* * * * *

(c) * * *

(6) * * *

(ii) * * *

(D) Contract sanctity dates for helicopter or aircraft parts and components controlled by 9A991.d: August 28, 1991.

* * * * *

7. Supplement No. 2 to part 742 (Anti-Terrorism Controls; Iran, Syria, and Sudan Contract Sanctity Dates and Related Policies), is amended by revising the phrase ''*Manual dimensional inspection machines described in ECCN 2B992*'' in the heading of paragraph (c)(37) to read ''*Manual dimensional inspection machines described in ECCN 2B996*''.

PART 743—[AMENDED]

8. The authority citation for 15 CFR part 743 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq*; 50 U.S.C. 1701 *et seq*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

9. Section 743.1 is amended by revising paragraph (c)(1)(v), to read as follows:

§ 743.1 Wassenaar Arrangement.

* * * * *

(c) * * *

(1) * * *

(v) *Category 5:* 5A001.b.8, 5B001 (items specially designed for 5A001.b.8), 5D001.a and .b, and 5E001.a;

* * * * *

PART 748—[AMENDED]

10. The authority citation for 15 CFR Part 748 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

11. Supplement No. 2 to part 748 (Unique License Application Requirements), is amended by revising the phrase ''§ 742.3 or § 744.4 of the EAR,'' in paragraph (g)(1) introductory text to read ''§ 742.3 of the EAR,''.

12. Supplement No. 4 to part 748 is amended by revising the entry for ''Australia'' and ''Belgium'' to read as follows:

Supplement No. 4 to Part 748—Authorities Administering Import Certificate/Delivery Verification (IC/DV) and End Use Certificate Systems in Foreign Countries

Country	IC/DV authorities	System administered
*	* * * * * * *	
Australia	Director, Strategic Trade Policy and Operations, Industry & Procurement Infrastructure Division, Department of Defence, Campbell Park 4–1–53, Canberra ACT 2600 Phone: +61 (0)2 6266 3717, Fax: +61 (0)2 6266 2997.	IC/DV.
*	* * * * * * *	
Belgium	Ministere Des Affaires Economiques, Administration Des Relations Economiques Rue General Leman, 60 1040 Bruxelles Phone: 02/206.58.16, Fax: 02/230.83.22.	IC/DV.
*	* * * * * * *	

PART 750—[AMENDED]

13. The authority citation for 15 CFR Part 750 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12981, 60 FR 62980, 3 CFR, 1997 Comp., p. 60; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

14. Section 750.7 is amended by:

a. redesignating paragraph (i) as paragraph (j), and

b. adding a new paragraph (i) to read as follows:

§ 750.7 Issuance of licenses.

* * * * *

(i) *Terminating license conditions.* Exporters or reexporters who have shipped under licenses with conditions that would not apply to an export under a License Exception or if no license was required, and foreign consignees who have agreed to such conditions, are no longer bound by these conditions when the licensed items become eligible for a License Exception or can be exported or reexported without a license. Items that become eligible for a License Exception are subject to the terms and conditions of the applicable License Exception and to the restrictions in § 740.2 of the EAR. Items that become eligible for export without a license remain subject to the EAR and any export, reexport, or disposition of such items may only be made in accordance with the requirements of the EAR. Termination of license conditions does not relieve an exporter or reexporter of its responsibility for violations that occurred prior to the availability of a License Exception or prior to the removal of license requirements.

* * * * *

PART 774—[AMENDED]

15. The authority citation for 15 CFR Part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420, 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 3201 *et seq.*, 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a, 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

16. In Supplement No. 1 to part 774, Category 0—Nuclear Materials, Facilities, and Equipment [And Miscellaneous Items] is amended by revising ECCN 0A984 to read as follows:

Supplement No. 1 to—

PART 774—THE COMMERCE CONTROL LIST

* * * * *

0A984 Shotguns, barrel length 18 inches (45.72 cm) inches or over; buckshot shotgun shells; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

License Requirements

Reason for Control: CC, UN.

Control(s)	Country Chart
CC applies to shotguns with a barrel length greater than or equal to 18 in. (45.72 cm), but less than 24 in. (60.96 cm) or buckshot shotgun shells controlled by this entry, regardless of end-user.	CC Column 1.
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm), regardless of end-user	CC Column 2.
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm) if for sale or resale to police or law enforcement.	CC Column 3.
UN applies to entire entry	Rwanda; Federal Republic of Yugoslavia (Serbia and Montenegro).

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value.

Related Controls: This entry does not control shotguns with a barrel length of less than 18 inches (45.72 cm). (See 22 CFR part 121.) These items are subject to the export licensing authority of the Department of State, Office of Defense Trade Controls.

Related Definitions: N/A.

Items: The list of items controlled is contained in the ECCN heading.

* * * * *

17. Supplement No. 2 to part 774 is amended by revising the phrase ''License Exception OTS'' in paragraph 1. General Technology Note to read ''License Exception TSU''.

Dated: August 19, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–22154 Filed 8–27–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM99–11–000]

Annual Updates of Filing Fees

August 24, 1999.

AGENCY: Federal Energy Regulatory Commission DOE.

ACTION: Final rule; correction.

SUMMARY: The Federal Energy Regulatory Commission published in the **Federal Register** of August 17, 1999, a document updating the Commission's filing fees. The filing fee for applications for exempt wholesale generator status in § 381.801 of the Commission's regulations was incorrectly listed. This document corrects the filing fee.

EFFECTIVE DATE: Effective on August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Troy Cole, Office of Finance, Accounting and Operations, Federal Energy Regulatory Commission, 888 First Street, NE., Room 42–80, Washington, DC 20426, 202–219–2970.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII, WordPerfect 8.0 format. User assistance is available at 202–208–2222 or by E-mail to CipsMaster@ferc.fed.us.

This document is also available through the Commission's Records and information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed, RIMS is available in the public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

Correction

The filing fee for applications for exempt wholesale generator status in § 381.801 of the Commission's regulations was incorrectly listed in the final rule updating filing fees issued on August 11, 1999. (64 FR 44,652 (Aug. 17, 1999)). The correct filing fee is $1,530.

§ 381.801 [Corrected]

On page 44,653, in the third column, correct amendment 8 to § 381.801 by correcting ''$ 1,460'' to read ''$ 1,530.''

Thomas R. Herlihy,

Executive Director and Chief Financial Officer.

[FR Doc. 99–22377 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–60–P §

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 89F–0338]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of fumaric acid grafted onto certain olefin polymers, and maleic anhydride grafted onto ethylene-vinyl acetate copolymers for use in contact with food. This action is in response to a petition filed by E. I du Pont de Nemours and Co.

DATES: This regulation is effective August 30, 1999; submit written objections and requests for a hearing September 29, 1999. The Director of the Office of the **Federal Register** approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in § 177.1350 (b)(2), effective August 30, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 31, 1989 (54 FR 36053), FDA announced that a food additive petition (FAP 9B4163) had been filed by E. I. du Pont de Nemours and Co., 1007 Market St., Wilmington, DE 19898 (presently, c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001). The petition proposed to amend the food additive regulations in § 177.1350 *Ethylene-vinyl acetate copolymers* (21 CFR 177.1350) and § 177.1520 *Olefin polymers* (21 CFR 177.1520) to provide for the safe use of fumaric acid and maleic anhydride grafted onto certain olefin polymers and maleic anhydride grafted onto ethylene-vinyl acetate copolymers for use in contact with food. In a subsequent submission, the petitioner withdrew its request for the proposed use of maleic anhydride grafted onto olefin polymers. In this final rule the agency is, therefore, providing for the use of only fumaric acid grafted onto olefin polymers.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additives is safe, that the additives will achieve their intended technical effects, and therefore, that the regulations in §§ 177.1350 and 177.1520 should be amended as set forth in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed previously. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has determined under 21 CFR 25.31(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Any person who will be adversely affected by this regulation may at any time on or before September 29, 1999 file with the Dockets Management Branch (address above) written objection thereto. Each objection shall

be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.1350 is amended by redesignating paragraph (a) introductory text and paragraphs (a)(1) through (a)(6) as paragraphs (a)(1) introductory text and (a)(1)(i) through (a)(1)(vi), respectively, and by redesignating paragraph (b) as paragraph (b)(1), and by adding paragraphs (a)(2) and (b)(2) to read as follows:

§ 177.1350 Ethylene-vinyl acetate copolymers.

* * * * *

(a)(1) * * *

(2) Maleic anhydride-grafted ethylene-vinyl acetate copolymers (CAS Reg. No. 28064–24–6) consist of basic resins produced by the catalytic copolymerization of ethylene and vinyl acetate, followed by reaction with maleic anhydride. Such polymers shall contain not more than 11 percent of polymer units derived from vinyl acetate by weight of total polymer prior to reaction with maleic anhydride, and not more than 2 percent of grafted maleic anhydride by weight of the finished polymer. Optional adjuvant substances that may be added to the copolymers include substances generally recognized as safe in food and food packaging, substances the use of which is permitted under applicable regulations in parts 170 through 189 of this chapter, and substances identified in § 175.300(b)(3)(xxv), (xxvii), (xxxiii), and (xxx) of this chapter and colorants for polymers used in accordance with the provisions of § 178.3297 of this chapter.

(b)(1) * * *

(2) Maleic anhydride grafted ethylene-vinyl acetate copolymers shall have a melt flow index not to exceed 2.1 grams per 10 minutes as determined by ASTM method D 1238–82, ''Standard Test Method for Flow Rates of Thermoplastics by Extrusion Plastometer,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or at the Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. Compliance of the melt flow index specification shall be determined using conditions and procedures corresponding to those described in the method as Condition E, Procedure A). The copolymers shall be used in blends with other polymers at levels not to exceed 17 percent by weight of total polymer, subject to the limitation that when contacting food of types III, IV–A, V, VI–C, VII–A, and IX, identified in § 176.170(c) of this chapter, Table 1, the polymers shall be used only under conditions of use C, D, E, F, and G, described in § 176.170(c) of this chapter, Table 2.

* * * * *

3. Section 177.1520 is amended by redesignating paragraph (a)(2) as paragraph (a)(2)(i), by adding paragraphs (a)(2)(ii) and (a)(3)(vi), by amending paragraph (c) in the table by adding items 2.4 and 3.8 in numerical order, and by amending paragraph (d)(7) in the table by alphabetically adding two entries to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(a) * * *

(2)(i) * * *

(ii) Fumaric acid-grafted polyethylene (CAS Reg. No. 26877–81–6) consists of basic polymers manufactured by the catalytic polymerization of ethylene followed by reaction with fumaric acid in the absence of free radical initiators. Such polymers shall contain grafted fumaric acid at levels not to exceed 2 percent by weight of the finished polymer.

(3) * * *

(vi) Olefin basic copolymers (CAS Reg. No. 61615–63–2) manufactured by the catalytic copolymerization of ethylene and propylene with 1,4-hexadiene, followed by reaction with fumaric acid in the absence of free radical initiators. Such polymers shall contain not more than 4.5 percent of polymer units deriving from 1,4-hexadiene by weight of total polymer prior to reaction with fumaric acid and not more than 2.2 percent of grafted fumaric acid by weight of the finished polymer.

* * * * *

(c) * * *

Olefin polymers	Density	Melting point (MP) or softening point (SP) (*Degrees Centigrade*)	Maximum extractable fraction (expressed as percent by weight of the polymer) in *N*-hexane at specified temperatures	Maximum soluble fraction (expressed as percent by weight of polymer) in xylene at specified temperatures
* * *	*	*	*	*
2.4 Olefin polymers described in paragraph (a)(2)(ii) of this section, having a melt flow index not to exceed 17 grams/per 10 minutes as determined by the method described in paragraph (d)(7) of this section, for use in blends with other polymers at levels not to exceed 20 percent by weight of total polymer, subject to the limitation that when contacting food of types III, IV–A, V, VI–C, VII–A, and IX identified in § 176.170(c) of this chapter, Table 1, the polymers shall be used only under conditions of use C, D, E, F, and G, described in § 176.170(c) of this chapter, Table 2.				
* * *	*	*	*	*
3.8 Olefin polymers described in paragraph (a)(3)(vi) of this section, having a melt flow index not to exceed 9.2 grams per 10 minutes as determined by the method described in paragraph (d)(7) of this section, for use in blends with other polymers at levels not to exceed 8 percent by weight of total polymer, subject to the limitation that when contacting food of types III, IV–A, V, VI–C, VII–A, and IX, identified in § 176.170(c) of this chapter, Table 1, the polymers shall be used only under conditions of use C, D, E, F, and G, described in § 176.170(c) of this chapter, Table 2.				
* * *	*	*	*	*

(d) * * *

(7) * * *

List of polymers	Conditions/procedures
* * * * *	
Olefin polymers described in paragraph (a)(2)(ii) of this section.	Condition E, procedure A.
Olefin polymers described in paragraph (a)(3)(vi) of this section.	Condition E, procedure A.

* * * * *

Dated: August 5, 1999.

Janice F. Oliver,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–22474 Filed 8–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F–0459]

Indirect Food Additives: Adjuvants, Production Aids, Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of isopropyl laurate in surface lubricants used in the manufacture of metallic articles intended for contact with food. This action is in response to a petition filed by Exxon Co. International.

DATES: This regulation is effective August 30, 1999; submit written objections and requests for a hearing September 29, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 18, 1999 (64 FR 13431), FDA announced that a food additive petition (FAP 9B4647) had been filed by Exxon Co. International, 200 Park Ave., Florham Park, NJ 07932–1002. The petition proposed to amend the food additive regulations in § 178.3910 *Surface lubricants used in the manufacture of metallic articles* (21 CFR 178.3910) to provide for the safe use of isopropyl laurate in surface lubricants used in the manufacture of metallic articles intended for contact with food.

The March 18, 1999, filing notice for the petition stated that the action resulting from the petition qualified for a categorical exclusion under 21 CFR 25.32(i). This conclusion was not correct. Upon further review, the agency determined that such a categorical exclusion is not appropriate for this proposed action, because the lubricant does not remain with the finished food packaging material through use by the consumer. Consequently, as discussed below, the agency considered the environmental effects of this action.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will

achieve its intended technical effect, and therefore, (3) the regulations in § 178.3910 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before September 29, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3910 is amended in the table in paragraph (a)(2) by alphabetically adding an entry under the headings ''List of substances'' and ''Limitations'' to read as follows:

§ 178.3910 Surface lubricants used in the manufacture of metallic articles.

* * * * *

(a) * * *

(2) * * *

List of substances	Limitations
* * * * * * *	
Isopropyl laurate (CAS Reg. No. 10233–13–3).	For use at a level not to exceed 10 percent by weight of the finished lubricant formulation.
* * * * * * *	

* * * * *

Dated: August 20, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–22476 Filed 8–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1225

[Docket No. NHTSA–99–5873]

RIN 2127–AH39

Operation of Motor Vehicles by Intoxicated Persons; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule; correction of effective date under the CRA.

SUMMARY: On Thursday, July 1, 1999, NHTSA published a final rule which adopted as final, with procedural changes, the interim rule concerning a new program established by the Transportation Equity Act for the 21st Century (TEA–21), published on September 3, 1998. This document corrects the effective date of the final rule published on July 1, 1999, to be consistent with the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, 808.

DATES: *Effective Date:* August 30, 1999.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Marlene Markison, Office of State and Community Services, NSC–01, telephone (202) 366–2121; or Ms.

Heidi L. Coleman, Office of Chief Counsel, NCC–30, telephone (202) 366–1834.

In FHWA: Byron Dover, Office of Highway Safety Infrastructure, HMHS–1, telephone (202) 366–2161; or Mr. Raymond W. Cuprill, HCC–20, telephone (202) 366–0834.

SUPPLEMENTARY INFORMATION:

Background

The CRA, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States.

The effective date of the final rule on Operation of Motor Vehicles by Intoxicated Persons, published at 64 FR 35568, is corrected from July 1, 1999 to August 30, 1999 in order to comply with the CRA.

Administrative Procedure Act

The Administrative Procedure Act provides that an agency may dispense with prior notice and opportunity for comment when the agency for good cause finds that such procedures are impracticable, unnecessary or contrary to the public interest, 5 U.S.C. 553(b)(3)(B). NHTSA has determined that prior notice and comment are unnecessary, because NHTSA is merely correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the CRA as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The agency finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

Issued on: August 25, 1999.

Adele Derby,

Associate Administrator, State and Community Services, National Highway Traffic Safety Administration.

Karen E. Skelton,

Chief Counsel, Federal Highway Administration.

[FR Doc. 99–22472 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 2 and 14

RIN 2900—AJ31

Delegations of Authority; Tort Claims

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations regarding delegations of authority for determining and reconsidering claims under the Federal Tort Claims Act. We believe these amendments will facilitate the processing of claims. This document also makes miscellaneous nonsubstantive changes to various regulatory provisions by revising or adding authority citations, updating titles of positions and VA subunits, correcting typographical errors, and making other nonsubstantive changes for the purpose of clarification.

DATES: Effective Date: August 30, 1999.

FOR FURTHER INFORMATION CONTACT: E. Douglas Bradshaw, Jr., Assistant General Counsel (021), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 273–6481.

SUPPLEMENTARY INFORMATION:

Administrative Procedure Act

This final rule consists of delegations of authority and nonsubstantive changes. Accordingly, it is exempt from the notice-and-comment and delayed effective date provisions of 5 U.S.C. 553.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final rule consists of delegations of authority and nonsubstantive changes that will not have an economic effect on entities. Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There are no Catalog of Federal Domestic Assistance numbers associated with this rule.

List of Subjects

38 CFR Part 2

Authority delegations (Government agencies).

38 CFR Part 14

Administrative practice and procedure, Claims, Government employees, Lawyers, Legal services, Organization and functions (Government agencies).

Approved: August 11, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons stated above, 38 CFR parts 2 and 14 are amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY

1. The authority citation for part 2 is revised to read as follows:

Authority: 5 U.S.C. 302, 552a; 38 U.S.C. 501, 512, 515, 1729, 1729A, 5711; 44 U.S.C. 3702, unless otherwise noted.

2. Sections 2.1 and 2.2 are redesignated as §§ 2.2 and 2.3, respectively; and a new § 2.1 is added to read as follows:

§ 2.1 General provisions.

In addition to the delegations of authority in this part, numerous delegations of authority are set forth throughout this title.

(Authority: 38 U.S.C. 512)

3. Section 2.6 is amended as follows:

a. The introductory text of paragraph (a) is amended by removing ''Chief Medical Director'' and adding, in its place, ''Under Secretary for Health'';

b. The heading for paragraph (a), and paragraphs (a)(1), (a)(3), and (a)(7), are amended by removing ''Veterans Health Services and Research Administration'' and adding, in its place, ''Veterans Health Administration'';

c. Paragraphs (a)(3) and (a)(7) are amended by removing ''Deputy Chief Medical Director'' and adding, in its place, ''Deputy Under Secretary for Health'';

d. Paragraph (e)(1) is removed and reserved; and

e. The authority citation following paragraph (g) is revised to read as follows:

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).

* * * * *

(Authority: 5 U.S.C. 552a)

PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

4. The heading for part 14 is revised to read as set forth above.

5. The authority citation for part 14 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5902–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

6. Section 14.600 is revised to read as follows:

§ 14.600 Federal Tort Claims Act—general.

(a) *Federal Tort Claims Act—overview*. The Federal Tort Claims Act (28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, and 2671 through 2680) prescribes a uniform procedure for handling of claims against the United States, for money only, on account of damage to or loss of property, or on account of personal injury or death, caused by the negligent or wrongful act or omission of a Government employee while acting within the scope of his or her office or employment, under circumstances where the United States, if a private person, would be liable in accordance with the law of the place where the act or omission occurred.

(b) *Applicable regulations.* The regulations issued by the Department of Justice at 28 CFR part 14 are applicable to claims asserted under the Federal Tort Claims Act, including such claims that are filed with VA. The regulations in §§ 14.600 through 14.605 of this part supplement the regulations at 28 CFR part 14.

(c) *Delegations of authority concerning claims.* Subject to the limitations in 28 CFR 14.6(c), (d), and (e), authority to consider, ascertain, adjust, determine, compromise, and settle claims asserted under the Federal Tort Claims Act (including the authority to execute an appropriate voucher and other necessary instruments in connection therewith) is delegated as follows:

(1) To the Under Secretary for Health, the Deputy Under Secretary for Health, Veterans Integrated Service Network (VISN) Directors, and VA Medical Facility Directors; with respect to any claim for $2,500 or less that arises out of the operations of the Veterans Health Administration.

(2) To the General Counsel, Deputy General Counsel, and Assistant General Counsel (Professional Staff Group I) with respect to any claim; provided that any award, compromise, or settlement in excess of $200,000 shall be effected only with the prior written approval of the Attorney General or his or her designee.

(3) To the Regional Counsels and Deputy Assistant General Counsel (Professional Staff Group I) with respect to any claim; provided that:

(i) Any award, compromise, or settlement in excess of $100,000 but not more than $200,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, or Assistant General Counsel (Professional Staff Group I); and

(ii) Any award, compromise, or settlement in excess of $200,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, or Assistant General Counsel (Professional Staff Group I) and with the prior written approval of the Attorney General or his or her designee.

(d) *Delegations of authority to reconsider final denial of a claim.* Subject to the limitations in 28 CFR 14.6(c), (d), and (e), authority under 28 CFR 14.9 to reconsider final denials of claims under the Federal Tort Claims Act is delegated as follows:

(1) To the Regional Counsel with jurisdiction over the geographic area where the occurrence complained of arose, with respect to any claim for $2,500 or less that arises out of the operations of the Veterans Health Administration.

(2) To the General Counsel, Deputy General Counsel, and Assistant General Counsel (Professional Staff Group I) with respect to any claim; provided that any award, compromise, or settlement in excess of $200,000 shall be effected only with the prior written approval of the Attorney General or his or her designee.

Note (1) to paragraph (c)(2): For any award, compromise, or settlement in excess of $100,000 but not more than $200,000 a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

Note (2) to paragraph (c)(3)(i): For any award, compromise, or settlement under paragraph (c)(3)(i) of this section a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

Note (3) to paragraph (d)(2): For any award, compromise, or settlement in excess of $100,000 but not more than $200,000 a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

(Authority: 28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, 2671–2680; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)

7. The undesignated center heading immediately preceding § 14.601 is removed.

8. Section 14.601 is amended as follows:

a. The heading for paragraph (a) is revised,

b. A heading for paragraph (b) is added, and

c. An authority citation at the end of the section is added, to read as follows:

§ 14.601 Investigation and development.

(a) *Development of untoward incidents.* * * *

(b) *Development of medical malpractice claims.* * * *

(Authority: 28 U.S.C. 2671–2680; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)

§ 14.602 [Amended]

9. In § 14.602, paragraph (a) is amended by removing ''shall be'' and adding, in its place, ''shall''.

10. Section 14.604 is amended as follows:

a. Paragraph (a) is amended by removing '', who will transmit forthwith to the appropriate agency'' and adding, in its place, ''for appropriate action in accord with 28 CFR 14.2'';

b. Paragraph (c) is amended by removing ''(see § 14.600(b)(1))''; and

c. An authority citation is added at the end of the section to read as follows:

§ 14.604 Filing a claim.

* * * * *

(Authority: 28 U.S.C. 1346(b)(1), 2401(b), 2671–2680; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)

11. The undesignated center heading immediately preceding § 14.605 is removed.

12. Section 14.605 is amended as follows:

a. Paragraph (b) is amended by removing ''Veterans Health Services and Research Administration'' and adding, in its place, ''Veterans Health Administration'' and by removing ''unsolved'' and adding, in its place, ''involved'';

b. Paragraph (d) is amended by removing ''employement'' and adding, in its place, ''employment''; and

c. An authority citation is added at the end of the section to read as follows:

§ 14.605 Suits against Department of Veterans Affairs employees arising out of a wrongful act or omission or based upon medical care and treatment furnished in or for the Veterans Health Administration.

* * * * *

(Authority: 28 U.S.C 2671–2680; 38 U.S.C. 512, 515, 7316; 28 CFR part 14, appendix to part 14)

13. In § 14.615, paragraph (a) is amended by removing ''Veterans' '' and adding, in its place, ''Veterans'', and an authority citation is added at the end of the section to read as follows:

§ 14.615 General.

* * * * *

(Authority: 28 U.S.C 2671–2680; 38 U.S.C. 512, 515, 7316; 28 CFR part 14, appendix to part 14)

[FR Doc. 99–22258 Filed 8–27–99; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH 121–1c; FRL–6425–1]

Approval and Promulgation of Implementations; Ohio Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving emission limits for two sources in Lake County, Ohio and redesignating Lake and Jefferson Counties to attainment for SO_2. EPA proposed this action on March 17, 1999 along with a direct final rule. On April 15, 1999, EPA received adverse comments from Weirton Steel Corporation (WSC), West Virginia, requesting that EPA not redesignate Jefferson County, Ohio to attainment for SO_2. WSC commented that EPA's reliance on the modeling dating back to 1975 is misplaced and that more current modeling is needed in order to demonstrate compliance with the SO_2 NAAQS. WSC also commented that some sources located in Jefferson County, Ohio, are contributing significantly to the nonattainment problem in Hancock County, West Virginia, and are interfering with West Virginia's ability to maintain compliance with the SO_2 NAAQS.

EPA has reviewed WSC's comments, disagrees with the comments, and concludes that Jefferson County should be redesignated to attainment.

Also, because EPA's response to adverse comments for Jefferson County was to withdraw direct final action for Lake as well as Jefferson County, today's action reinstates approval of the Lake County emission limits and redesignation as well as the Jefferson County redesignation. If refined modeling evidence becomes available that indicates a need for tighter limits for Jefferson County, as WSC anticipates, then EPA will require Ohio to adopt the tighter limits as appropriate at that time.

DATES: This final rule is effective on September 29, 1999.

ADDRESSES: Copies of the revision request and the comments letter are available for inspection at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Phuong Nguyen at (312) 886–6701 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Phuong Nguyen at (312) 886–6701.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. General Information:

What action is EPA taking today?

EPA is approving a State Implementation Plan (SIP) revision which replaces the federally promulgated limits by State promulgated limits for the two sources in Lake County. In addition, EPA is approving maintenance plans in Jefferson and Lake Counties, Ohio. Finally, EPA is redesignating Jefferson and Lake Counties, Ohio to attainment of NAAQS for sulfur dioxide (SO_2).

EPA proposed this action and promulgated this action as a direct final rule on March 17, 1999. On April 15, 1999, we received objections to the Jefferson County action from Weirton Steel Corporation (WSC). We therefore withdrew our direct final approval, addressing Lake as well as Jefferson County. WSC's objections are discussed at length in the following section. We have concluded that WSC's comments do not warrant deferring or rejecting redesignation of Jefferson County. Therefore, EPA is taking final the action as proposed.

II. Comments and Responses

Who sent comments?

On April 15, 1999, we received adverse comments from WSC of Hancock County, West Virginia, objecting to the SO_2 redesignation for Jefferson County, Ohio. Hancock County, West Virginia, is adjacent to Jefferson County, and was designated nonattainment for SO_2 on December 21, 1993 (58 FR 67334). WSC is planning to do new modeling using a refined model to determine its impact on SO_2 levels and the impact of nearby sources, some of which are located in Jefferson County, Ohio. WSC's comments thus reflect its interest in the impact that Jefferson County sources have on SO_2 concentrations in the WSC environs.

What were the comments and how does EPA respond?

WSC's letter included two comments on EPA's proposed rulemaking, recommending that EPA not redesignate Jefferson County based on uncertainty of attainment and failure to satisfy Clean Air Act section 110(a)(2)(D). The following sections describe these comments further and provide EPA's response.

1. Attainment of National Ambient Air Quality Standards (NAAQS)

EPA proposed to find Jefferson County attaining the SO_2 NAAQS on the basis of compliance of key sources with emission limits. These limits were set at levels shown to assure attainment by modeling conducted in 1975. Consequently, we concluded that use of current emission rates in the approved (1975) modeling analysis would show the area to be attaining the standards.

WSC's first comment disagrees with using 1975 modeling for determining the attainment status of Jefferson County. WSC believes that new modeling is needed for this purpose. WSC is preparing a protocol to submit to the West Virginia Department of Environmental Protection (WVDEP) to model SO_2 sources around the Weirton area. This modeling will include most of the largest sources in Jefferson County. WSC recommended that EPA defer rulemaking on the Jefferson County redesignation request until the new modeling is available.

EPA recognizes that new modeling techniques have become available since 1975 and are recommended by the current modeling guidelines for new modeling analyses. On other hand, the 1975 modeling, which EPA approved on January 27, 1981, is the best currently available evidence as to Jefferson County's attainment situation. WSC provided no results from more current modeling to suggest that Jefferson County is violating the NAAQS, and WSC provided no basis or rationale to expect that new modeling would show violations. EPA customarily evaluates SO_2 redesignation requests based on available evidence rather than requiring updated modeling. In the absence of updated modeling showing violations, EPA continues to believe based on available evidence that Jefferson County is attaining the SO_2 NAAQS.

Implicit in WSC's comments is a view that modeling is necessary to assess whether the SO_2 NAAQS is being attained. Although the relative merits of modeling and monitoring data vary, EPA generally shares WSC's view. Consequently, if WSC prepares modeling meeting current modeling guidelines, EPA expects Ohio and West Virginia to work together to revise limits as necessary to assure attainment throughout the area. As appropriate, EPA will at that time reevaluate the attainment status of Jefferson County.

2. Section 110(a)(2)(D)

WSC's second comment is based on section 110(a)(2)(D) of the Clean Air Act. WSC claimed that some sources located in Jefferson County, Ohio, are contributing significantly to the nonattainment problem in Weirton and interfering with Hancock County, West Virginia's ability to maintain compliance with the SO_2 NAAQS. WSC believes that the results of its proposed modeling will demonstrate this significant contribution of Jefferson County sources to Hancock County nonattainment. WSC also commented that the previously conducted SO_2 modeling has shown that these large sources of SO_2 in Jefferson County are significant contributors to SO_2 nonattaiment in and around the Weirton area.

When EPA approved Ohio's SIP, EPA made no determination that the SIP did not comply with the interstate transport provisions under the predecessor to section 110(a)(2)(D). As indicated in a memorandum from John Calcagni, Director of Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, EPA takes the position that when acting on a redesignation request that may implicate section 110(a)(2)(D), EPA may rely on prior approvals of the SIP, and EPA is not obligated to review whether, at the time EPA is approving the redesignation request, the State is in compliance with section 110(a)(2)(D). EPA most recently took this position in approving a request to redesignate the Cleveland-Akron-Lorain Ohio as attainment for ozone. The US Court of Appeals for the 6th Circuit upheld EPA's action against a challenge based on grounds similar to those presented by the commenter concerning today's action. *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.2d 984 (6th Cir. 1999).

In addition, it should be emphasized that WSC has not yet presented to EPA modeling that would substantiate WSC's position that Jefferson County sources are contributing significantly to Hancock County nonattainment. Given the unanswered questions as to the respective impacts of Jefferson and Hancock County sources and their relative ease of control, EPA cannot conclude at this time that Jefferson County sources are contributing significantly to nonattainment in the Weirton area.

We understand that the efforts by WSC and West Virginia to satisfy nonattainment planning requirements for Hancock County, West Virginia, may supply much of the information that EPA would need before it could find a violation of section 110(a)(2)(D). WSC should provide to EPA the details of its modeling results, the percent impact of sources in Jefferson County vs. WSC and other sources, the sources' control strategy options, and the schedule by which WSC is expecting to come into compliance with applicable emission limits.

As planning for Hancock County proceeds, EPA expects Ohio and West Virginia to work together to assure that all relevant sources have limits sufficient to assure attainment throughout the Weirton area. EPA expects the modeling analysis to include a number of Ohio sources. Depending on the results of that modeling, EPA expects that the States will consider a variety of control strategy options, including options involving reduced emission limits at Ohio facilities. We expect that Ohio and West Virginia would then agree on a strategy and make any necessary rule revisions accordingly. Nevertheless, if WSC and West Virginia develop information that Ohio sources contribute significantly to nonattainment in Hancock County (including information that controls of these Ohio sources would be an equitable part of a Weirton area control strategy), and Ohio fails to adopt appropriate emission limits, then this information should be provided to EPA. If warranted EPA would consider requiring Ohio to submit a SIP revision to implement necessary controls, or West Virginia may submit a petition under section 126(b) seeking controls on the Jefferson County sources.

III. Other Proposed Action

Why is EPA finalizing other proposed action?

On March 17, 1999, EPA approved the SIP revision request submitted by the State of Ohio, which replaced the federally promulgated limits by state promulgated limits for two sources (First Energy, Eastlake Plant and Ohio Rubber Company) in Lake County, Ohio. In addition we also approved the SO_2 maintenance plan and the redesignation request for Lake and Jefferson Counties.

On May 10, 1999, we withdrew our direct final approval for both Lake and Jefferson Counties due to the adverse comments we had received from WSC on the Jefferson County redesignation. We received no adverse comments on the actions other than redesignation of Jefferson County. We continue to believe that the submitted State emission limits for the two Lake County sources are equivalent and suitable replacements for the current federally promulgated limits, that the maintenance plans for the two counties are adequate to assure continued attainment, and that Lake County has satisfied all the requirements in section 107(d)(3)(E) for redesignation. Therefore, EPA is finalizing these actions as proposed on March 17, 1999.

IV. Conclusion

EPA has reviewed all of the comments submitted in response to the Jefferson County SO_2 redesignation. First, although WSC believes that new modeling meeting current modeling guidelines must be used to assess whether violations of the SO_2 air quality standards are occurring near some Ohio sources, EPA believes that it is appropriate to continue to rely on the existing modeling underlying the current approved Ohio limits, which suggests that the area is attaining the standard. Second, sources located in Jefferson County have not been shown to contribute significantly to a violation of the SO_2 NAAQS near Weirton Steel Corporation. Therefore, EPA has not concluded and cannot conclude that section 110(a)(2)(D) is violated, and instead must conclude that Ohio has satisfied the fifth prerequisite for redesignation by satisfying all requirements of section 110 including section 110 (a)(2)(D). Consequently, EPA is redesignating Jefferson County to attainment.

EPA is also approving two SIP revisions in Lake County, approving maintenance plan for the two counties, and redesignating Lake County to attainment. Finally, the codification for this rulemaking corrects a longstanding omission in Title 40, § 52.1881(a)(8) by reinserting the sources in Ross and Sandusky Counties for which no action has been taken.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.)

12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available

and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: August 5, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Section 52.1870 is amended by adding paragraph (c)(118) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(118) On August 20, 1998, Ohio submitted material including State adopted limits for Lake County, and requested approval of limits for the Ohio First Energy Eastlake Plant and the Ohio Rubber Company Plant.

(i) Incorporation by reference.

(A) Rule 3745–18–49 (G) and (H) of the Ohio Administrative Code, effective May 11, 1987.

3. Section 52.1881 is amended by revising paragraph (a)(4) and (a)(8) and adding paragraph (a)(13) to read as follows:

§ 52.1881 Control strategy; Sulfur oxide (sulfur dioxide).

(a) * * *

(4) Approval—EPA approves the sulfur dioxide emission limits for the following counties: Adams County (except Dayton Power & Light—Stuart), Allen County (except Cairo Chemical), Ashland County, Ashtabula County, Athens County, Auglaize County, Belmont County, Brown County, Carroll County, Champaign County, Clark County, Clermont County (except Cincinnati Gas & Electric—Beckjord), Clinton County, Columbiana County, Coshocton County (except Columbus & Southern Ohio Electric—Conesville), Crawford County, Darke County, Defiance County, Delaware County, Erie County, Fairfield County, Fayette County, Fulton County, Gallia County (except Ohio Valley Electric Company—Kyger Creek and Ohio Power—Gavin), Geauga County, Greene County, Guernsey County, Hamilton County, Hancock County, Hardin County, Harrison County, Henry County, Highland County, Hocking County, Holmes County, Huron County, Jackson County, Jefferson County, Knox County, Lake County (except Painesville Municipal Plant boiler number 5) , Lawrence County (except Allied Chemical—South Point), Licking County, Logan County, Lorain County (except Ohio Edison—Edgewater, Cleveland Electric Illuminating—Avon Lake, U.S. Steel—Lorain, and B.F. Goodrich), Lucas County (except Gulf Oil Company, Coulton Chemical Company, and Phillips Chemical Company), Madison County, Marion County, Medina County, Meigs County, Mercer County, Miami County, Monroe County, Morgan County, Montgomery County (except Bergstrom Paper and Miami Paper), Morrow County, Muskingum County, Noble County, Ottawa County, Paulding County, Perry County, Pickaway County, Pike County (except Portsmouth Gaseous Diffusion Plant), Portage County, Preble County, Putnam County, Richland County, Ross County (except Mead Corporation), Sandusky County (except Martin Marietta Chemicals), Scioto County, Seneca County, Shelby County, Trumbull County, Tuscarawas County, Union County, Van Wert County, Vinton County, Warren County, Washington County (except Shell Chemical), Wayne County, Williams County, Wood County (except Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6), and Wyandot County.

* * * * *

(8) No Action—EPA is neither approving nor disapproving the emission limitations for the following counties on sources pending further review: Adams County (Dayton Power & Light—Stuart), Allen County (Cairo Chemical), Butler County, Clermont County (Cincinnati Gas & Electric—Beckjord), Coshocton County (Columbus & Southern Ohio Electric—Conesville), Cuyahoga County, Franklin County, Gallia County (Ohio Valley Electric Company—Kyger Creek, and Ohio Power—Gavin), Lake County (Painesville Municipal Plant boiler number 5), Lawrence County (Allied Chemical—South Point), Lorain County (Ohio Edison—Edgewater Plant, Cleveland Electric Illuminating—Avon Lake, U.S. Steel—Lorain, and B.F. Goodrich), Lucas County (Gulf Oil Company, Coulton Chemical Company, and Phillips Chemical Company), Mahoning County, Montgomery County (Bergstrom Paper and Miami Paper), Pike County (Portsmouth Gaseous Diffusion Plant), Ross County (Mead Corporation), Sandusky County (Martin Marietta Chemicals), Stark County, Washington County (Shell Chemical Company), and Wood County (Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6).

* * * * *

(13) In a letter dated October 26, 1995, Ohio submitted a maintenance plan for sulfur dioxide in Lake and Jefferson Counties.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. In § 81.336 the table entitled ''Ohio SO_2'' is revised to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Athens County				X
Clermont County				X
Columbiana County				X
Coshocton County: X[1]				
The remainder of Coshocton County				X[1]
Cuyahoga County:				
The Cities of Bay Village, Westlake, North Olmsted, Olmsted Falls, Rock River, Fairview Park, Berea, Middleburg Hts., Strongsville, North Royalton, Broadview Hts., Brecksville and the Townships of Olmsted and Riveredge				X
The remainder of Cuyahoga County	X			
Gallia County:				
Addison Township		X[1]		
The remainder of Gallia County				X[1]
Greene County				X
Hamilton County:				
The City of Cincinnati bounded on the west by 175 and U.S. Route 127, and on the south by the Ohio and Little Miami Rivers; the Cities of Norwood, Fairfax, Silverton, Golf Manor, Amberly, Deer Park, Arlington Heights, Elwood Place, and St. Bernard				X[1]
The remainder of Hamilton County				X[1]
Jefferson County:				
Cities of Steubenville & Mingo Junction, Townships of Steubenville, Island Creek, Cross Creek, Knox and Wells				X
The remainder of Jefferson County				X[1]
Lake County:				
The Cities of Eastlake, Timberlake, Lakeline, Willoughby (north of U.S. 20), and Mentor (north of U.S. 20 west of S.R. 306)				X
The remainder of Lake County				X
Lorain County:				
Area bounded on the north by the Norfolk and Western Railroad Tracks, on the east by State Route 301 (Abbe Road), on the south by State Route 254, and on the west by Oberlin Road	X			
The remainder of Lorain County				X
Lucas County:				
The area east of Rte. 23 & west of eastern boundary of Oregon Township	X[1]			
The remainder of Lucas County				X[1]
Mahoning County				X
Montgomery County				X
Morgan County:				
Center Township				X[1]
The remainder of Morgan County				X[1]
Summit County:				
Area bounded by the following lines—North—Interstate 76, East—Route 93, South—Vanderhoof Road, West—Summit County Line				X
Area bounded by the following lines—North—Bath Road (48 east to Route 8, Route 8 north to Barlow Road, Barlow Road east to county line, East—Summit/Portage County line, South Interstate 76 to Route 93, Route 93 south to Route 619, Route 619 east to County line, West-Summit/Medina County line	([2])	([2])	([2])	([2])
Entire area northwest of the following line Route 80 east to Route 91, Route 91 north to the County line				X[3]
The remainder of Summit County				X[4]
Trumbull County				X
Washington County				X
Waterford Township				X
The remainder of Washington County				X
All other counties in the State of Ohio				X[1]

[1] EPA designation replaces State designation.
[2] This area remains undesignated at this time as a result of a court remand in PPG Industries, Inc. vs. Costle, 630 F.2d 462 (6th Cir. 1980).
[3] This area was affected by the Sixth Circuit Court remand but has since been designated.
[4] The area was not affected by the court remand in PPG Industries, Inc. vs. Costle, 630 F.2d 462 (6th Cir. 1980).

[FR Doc. 99–22319 Filed 8–27–99; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–158; FCC 99–171]

Operator Services Providers and Call Aggregators.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to specify a deadline to update inaccurate information posted on a public phone about the presubscribed provider of long-distance operator services at that location. The FCC acted in further implementation of the dual goals of the Telephone Operator Consumer Services Improvement Act of 1990 (''TOCSIA''). Those are to protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls; and to ensure that consumers have the opportunity to make informed choices in making such calls. The FCC concluded that, consistent with its obligations to protect consumers pursuant to that Congressional mandate, it should specify deadlines by which aggregators must provide accurate information to consumers.

DATES: New § 64.703(c) contains information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for that section.

Written comments by the public on the information collections are due September 29, 1999.

OMB notification of action is due October 29, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, DC 20554.

Send a copy of any comments that concern information collection requirements for the new rule adopted in CC Docket No. 94–158 to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Adrien Auger, 202–418–0960. For additional information concerning the information collections contained in this Report and Order contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: 1. The Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA), codified as Section 226 of the Communications Act of 1934, 47 U.S.C. 226, requires that call aggregators post, on or near a payphone or other aggregator location, the name, address, and toll-free telephone number of the presubscribed provider of long-distance operator services. The FCC implements the Section 226 requirements with its rules at 47 CFR 64.703 *et seq.* Both Section 226(c)(1)(A) of the Communications Act and § 64.703(b) of the Commission's rules require call aggregators to post, on or near a payphone, the name, address, and toll-free telephone number of the presubscribed long-distance provider of operator services. Neither Congress nor the FCC previously has specified a deadline by which to update any change in such information to consumers.

2. In 1995, the Commission sought comment whether it should specify a time by which aggregators must update information posted on or near payphones. 60 FR 8217, Feb. 13, 1995. In 1996, the Commission requested comment on a proposed 30-day deadline that the majority of those who had commented favored. 61 FR 15 020 Apr. 4, 1996.

3. The Commission has revised 47 CFR part 64, in a *Second Report and Order* released July 19, 1999, in CC Docket No. 94–158. The revised rule provides greater certainty to aggregators and presubscribed providers of operator services at aggregator locations with regard to their obligations under Section 226 of the Communications Act. The Commission's purpose in adopting the new rule is to protect consumers, ensure their opportunity to make informed choices when placing calls from public phones, enable them to choose a long-distance carrier of their choice, and thus further greater price and service competition in the marketplace.

4. This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collections contained in this proceeding. This is a synopsis of the new information collection requirement. Section 64.703(c) requires that information that call aggregators must post on or near payphones, pursuant to Section 226 of the Communication Act of 1934, as amended, 47 U.S.C. 226, be updated as soon as practicable, but no later than 30 days from the time of a change of the presubscribed provider of operator services.

Paperwork Reduction Act: This Report and Order contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–12. Written comments by the public on the information collections are due September 29, 1999. OMB notification of action is due October 29, 1999. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0653.

Title: Consumer Information Posting by Aggregators—§ 64.703(b) and (c).

Form No.: N/A.

Type of Review: Revised collection.

Respondents: Businesses or other for profit.

Section/Title	No. of responses	Est. time per response	Total annual burden
Sections 64.703(b) and (c) 3.67	206,566	56,200	.....

Total Annual Burden: 206,566 burden hours

Estimated Costs Per Respondents: $0.

Needs and Uses: Section 64.703(c) establishes a 30-day outer limit for updating the posted consumer information when an aggregator has changed the presubscribed operator service provider. This modified information collection requirement was a response to widespread failure of aggregators to disclose information necessary for informed consumer choice in the marketplace.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read:

Authority: 47 U.S.C. 10, 201, 218, 226, 332, unless otherwise noted.

2. Section 64.703 is amended by revising paragraph (c) to read as follows:

§ 64.703 Consumer information.

* * * * *

(c) *Updating of postings.* The posting required by this section shall be updated as soon as practicable following any change of the carrier presubscribed to provide interstate service at an aggregator location, but no later than 30 days following such change. This requirement may be satisfied by applying to a payphone a temporary sticker displaying the required posting information, provided that any such temporary sticker shall be replaced with permanent signage during the next regularly scheduled maintenance visit.

* * * * *

[FR Doc. 99–22402 Filed 8–27–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 575

[Docket No. NHTSA–98–3381, Notice 3]

RIN 2127–AH68

Consumer Information Regulations; Utility Vehicle Label

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final Rule; Response to Petition for Reconsideration.

SUMMARY: On March 9, 1999, we published a final rule modifying the rollover warning currently required for small- and mid-sized utility vehicles. In response to a petition for reconsideration of that final rule, this document amends the utility vehicle and air bag warning label requirements to allow manufacturers to combine the rollover and air bag alert labels in one label, permits manufacturers to comply with either of two options for installing both labels on the same side of the sun visor until September 1, 2000, and allows manufacturers to voluntarily install on the same side of the sunvisor as the air bag label, rollover warning labels in vehicles for which they are not required, such as pickup trucks and large utility vehicles. Today's final rule will provide manufacturers with additional flexibility to determine the location of air bag and rollover warning labels in sport utility vehicles.

DATES: This final rule is effective September 1, 1999, however, voluntary compliance with the final rule is allowed as of August 30, 1999. Petitions for reconsideration must be received by October 14, 1999.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number of this final rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For labeling issues: Mary Versailles, Office of Planning and Consumer Programs, NPS–31, telephone (202) 366–2057, facsimile (202) 366–4329.

For legal issues: Nicole Fradette, Office of Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

On March 9, 1999, we published a final rule amending the rollover warning label and owner's manual requirements for small- and mid-sized utility vehicles.[1] (64 FR 11724) The agency explained that the new label and owner's manual requirements will more effectively alert drivers to the risk the vehicles will roll over, the steps they can take to avoid that risk, and the steps they can take to reduce the chance of injury in the event of a rollover. The new label replaced the former text-only format with a format using bright colors, graphics, and short bulleted text messages. The rule requires the label's header to have an alert symbol (a triangle containing an exclamation point) followed by the statement ''WARNING: Higher Rollover Risk'' in black text on a yellow background. The following three statements must appear below the header in the center of the label: ''Avoid Abrupt Maneuvers and Excessive Speed,'' ''Always Buckle Up,'' and ''See Owner's Manual For Further Information.'' The rule specifies that the label must contain two pictograms: one showing a tilting utility vehicle on the left of the label, and the other showing a seated vehicle occupant with a secured three-point belt system on the right. The pictograms and the statement must be in black on a white background. The rule requires the label to be placed on either the driver's sun visor or the driver's side window. If the label is placed on the back of the driver's sun visor, the rule requires an alert label to be placed on the front of the visor urging the person to flip the visor over and read the information on the other side. The new label is required on utility vehicles with a wheelbase of 110 inches or less. The rule also requires additional information on rollover be included in the owner's manuals of these vehicles. The new requirements are effective September 1, 1999.

On April 26, 1999, we published a notice clarifying that manufacturers of utility vehicles with a wheelbase of 110 inches or less may comply with the upgraded requirements in advance of the September 1, 1999, mandatory compliance date. (64 FR 20209) We explained that any manufacturer choosing to comply with the new rule before September 1, 1999, must comply with the new rule in its entirety (i.e., they must comply with the new owners'

[1] ''Utility vehicles'' are defined in 49 CFR Part 575 as multipurpose passenger vehicles (other than those which are passenger car derivatives) with a wheelbase of 110 inches or less and with special features for off-road operation. 49 CFR Part 575.105. These vehicles are commonly referred to as sport utility vehicles in the media.

manual information requirements as well as with the new, improved labeling requirements).

II. Alliance of Automobile Manufacturers' Petition for Reconsideration

On April 23, 1999, the Alliance of Automobile Manufacturers (AAM) submitted a petition for reconsideration of the March 9 final rule. The petition raised issues regarding (1) the requirement that the air bag warning label be to the left of the rollover warning label; (2) the requirement that the air bag warning label and rollover warning label not be contiguous; (3) the air bag and rollover alert label requirements; and (4) the air bag label requirement's prohibition of ''other information'' as it pertains to a rollover warning label installed in a vehicle that is not required to have the label. The AAM also wrote to the agency on April 8, 1999, requesting clarification as to whether foreign language translations of the rollover warning label were allowed and whether voluntary compliance with the new requirements was permitted. As noted above, on April 28, 1999, we published a notice clarifying that early compliance with the new rule was permitted. A discussion of the remaining issues raised by AAM and our response to them follows.

III. Agency's Response to Petition for Reconsideration

A. Restriction on Label's Location

To keep the pictograms of the air bag and rollover warning labels from running together visually, the final rule specified that the air bag warning label must be to the left of the utility vehicle rollover warning label when both labels are placed on the same side of the sun visor. We reasoned that since the pictogram on the air bag warning label in Figure 6a (after which the majority of air bag warning labels are modeled) of the air bag warning requirements is on the label's left side, placing that label to the left of the rollover warning label would put the air bag pictogram far from the pictograms on the rollover warning label. We believed that such a placement would prevent the pictograms of the two labels from blending together visually.

In its petition, AAM asked that we delete the requirement that the air bag warning label be to the left of the rollover warning label. AAM stated that, unlike the rollover warning label which specifies the content, form, and sequence of the label, the air bag warning label requirements specify only the content of the label—not the location of the pictogram. The form and sequence of the air bag label and the placement of the pictogram is left to the discretion of the manufacturer. Consequently, the air bag pictogram could be to the right on some air bag warning labels and the pictograms of the two labels could, in some situations, be adjacent. Since the purpose of this requirement is to keep the pictograms from running together visually, such a placement, while permitted, would thwart the requirement's purpose.

We are, therefore, replacing the requirement that the air bag warning label be placed to the left of the rollover warning label with a requirement that there be text between the air bag pictogram and the rollover pictogram whenever both labels are affixed to the same side of the sun visor. We believe that this change will prevent the pictograms from visually blending. This provision will also provide manufacturers with additional label placement options.

B. Contiguous Label Prohibition

To maintain the separateness of the two labels and their messages, the agency specified that the air bag and rollover warning labels could not be contiguous. In its petition for reconsideration, AAM asked the agency to delete this requirement and replace it with a requirement that the labels be visually separate. AAM argued that specifying that the labels may not be connected ''without specifying a minimum separation distance means that labels 1 mm apart'' would comply with the requirement. AAM stated that it believed the agency's intent was to visually separate the two messages, but suggested that other methods could be effectively used to maintain the separateness of the two labels. For example, AAM suggested using one label with clear, transparent material between the two messages to give the appearance of separate labels when placed on the sun visor. AAM also suggested placing a border around each message to separate the two messages from one another. AAM argued that the requirement should be revised to specify that the messages of the two labels be ''visually separated'' when placed on the same side of the sun visor.

We do not believe that the requirement suggested by AAM is readily enforceable. Manufacturers are required to certify that their products conform to NHTSA's regulations before they can be offered for sale. Manufacturers must know how NHTSA plans to determine compliance with a particular regulation if they are to ensure that their vehicles comply. The requirement that the labels be ''visually separated'' is too subjective. Consequently, manufacturers would have difficulty determining whether their labels were ''visually separate'' within the meaning of the standard.

By specifying that the two labels not be contiguous, we intended to require a clear demarcation between the two messages to ensure that the two warnings did not run together visually and confuse the reader.[2] We did not specify the amount of space between the two labels because we did not want to be unnecessarily design restrictive. However, based on AAM's petition and several other manufacturer inquiries, it is apparent that manufacturers believe that this provision requires them to separately affix each label to the vehicle and prohibits them from using one material to affix the labels to the sunvisor.

We still believe it important to maintain the separateness of the two labels and their messages. AAM suggested that placing a border around each label would be one way of ensuring that the labels remained visibly distinct. We note, however, that unless we specify the distance between the borders, labels placed 1 millimeter apart could comply with the requirement. Therefore, simply placing a border around each label without specifying a distance between the borders would not address AAM's earlier concern that manufacturers could place the labels one millimeter apart and still comply with the noncontiguous requirement.

In response to the concerns raised by AAM in its petition, we have decided to replace the requirement that the labels not be contiguous with a requirement that the labels must be situated so that the shortest distance from any of the lettering or graphics on the rollover warning label to any of the lettering or graphics on the air bag warning label is not less than three centimeters or, in the case of rollover warning and air bag warning labels that are each completely surrounded by a continuous solid-lined border, the shortest distance from the border of the rollover warning label to the border of the air bag warning label must be not less than one centimeter when both labels are affixed to the same side of the sun visor. We believe that this provision, unlike the provision suggested by AAM, is objective, readily

[2] As discussed in the March 9, 1999 final rule, when multiple hazard warnings are placed in the same location, ANSI Z535.4 (1991) recommends that individual messages have sufficient space around them to prevent them from visually blending together.

enforceable, and will ensure that the warning labels remain visually distinct.

We are also amending the March 9 final rule to explicitly allow manufacturers to meet the rollover labeling requirements by permanently marking or molding the required information to the vehicle. This provision will ensure that manufacturers may, if they so choose, use one material or process to affix the two labels to the vehicle. This means that a manufacturer could, at its option, silkscreen, emboss, or in some other way permanently mark the rollover warning to the vehicle. We believe that these changes will alleviate any confusion as to what is required and will give manufacturers the flexibility to determine the best way to affix the required warnings to their vehicles.

C. Compliance options for placing labels on the same side of the sun visor

In the March 9 final rule we established a September 1, 1999, effective date for the new labeling and owner's manual requirements. With respect to the labeling requirement, we noted that all of the commenters agreed that a leadtime of 180 days was sufficient to design, produce and install a new label. On April 26, 1999, we published a notice clarifying that manufacturers could voluntarily comply with the new requirements in advance of the September 1, 1999 mandatory compliance date. We understand that some manufacturers intend to do so.

We are concerned that requiring manufacturers to comply with the new requirements by September 1, 1999, would not give manufacturers who wish to install both labels on the same side of the sun visor sufficient lead time to design, produce, and install new labels that comply with the new requirements. We also believe, however, that those who can comply with the requirements of today's rule should be allowed to do so. Therefore, manufacturers who install both labels on the same side of the sunvisor may, until September 1, 2000, choose between two compliance options. The first option would require the air bag label to be to the left of the rollover warning label and the labels to be noncontiguous. The second option would require there to be text separating the pictograms of the two labels and that either the labels must be located such that the shortest distance from any of the lettering or graphics on the rollover warning label to any of the lettering or graphics on the air bag warning label is at least three centimeters, or where the rollover warning and air bag warning labels are each completely surrounded by a continuous solid-lined border, the shortest distance from the border of the rollover warning label to the border of the air bag warning label must be at least one centimeter. As of September 1, 2000, manufacturers would have to comply with the requirements of the second option. We believe that this provision will give manufacturers sufficient lead time to comply with the new requirements for placing labels on the same side of the sun visor.

A manufacturer must select one of the compliance options at the time it certifies the vehicle and may not thereafter select the other option for the vehicle. Failure to comply with the selected option would constitute a noncompliance with the standard regardless of whether the vehicle complies with the other option.

D. Air Bag and Rollover Alert Label Requirements

The final rule requires that an alert label be placed on the front of the sun visor if the rollover label is not visible when the sun visor is in the stowed position. The air bag warning label has a similar requirement. Currently, these two alert labels may not be combined. AAM requested that we amend the rollover and air bag alert label requirements to allow the two labels to be combined when both the air bag and rollover warning labels are not visible when the visor is in the stowed position. AAM argued that it was redundant and unnecessary to require two separate alert labels with two ''flip visor over'' text messages on the driver's sun visor.

We agree that only one alert label is needed to alert the driver to turn the visor over for an important safety message. Therefore, we are amending the alert label requirements to allow the warnings to be combined in one label. The combined alert label must contain the following statements in yellow text on a black background: ''Air Bag and Rollover Warnings'', ''Flip Visor Over''. In addition, the label must include a black pictogram on a white background of an air bag deploying into a rearfacing infant seat. The pictogram must be encircled by a red circle with a slash through it. We believe the combined alert label will effectively alert drivers to the importance of turning the visor over to read the label and will give manufacturers the option of affixing one alert label instead of two.

E. Voluntary placement of rollover warning labels

In the March 9, 1999 final rule, we amended the text of the air bag warning label requirement (49 CFR 571.208, S4.5.1(b)(3)) to allow both the air bag label and the rollover label to be placed on the same side of the sun visor. In its petition, AAM noted that the change made to the provision's regulatory text prohibits the voluntary installation of the rollover warning label on the same side of the sun visor as the air bag warning label in vehicles such as large SUVs or pickup trucks.

The text of S4.5.1(b)(3) prohibits manufacturers from affixing to the same side of the sun visor as the air bag label anything other than the air bag maintenance label and the rollover label required on utility vehicles with a wheelbase of 110 inches or less. Specifically, S4.5.1(b)(3) states:

> Except for the information on an air bag maintenance label placed on the visor pursuant to S4.5.1(a) of this standard, or on a utility vehicle label placed on the visor pursuant to 49 CFR 575.105(d)(1), no other information shall appear on the same side of the sun visor to which the sun visor air bag warning label is affixed. Except for the information in an air bag alert label placed on the visor pursuant to S4.5.1(c) of this standard, no other information about air bags or the need to wear seat belts shall appear anywhere on the sun visor.

Under S4.5.1(b)(3), as currently drafted, a rollover warning label installed on the same side of the sun visor as the air bag warning label on a large-sized utility vehicle or a pickup truck would be prohibited as ''other information'' since it would not be installed pursuant to 49 CFR 575.105(d)(1), which applies only to utility vehicles with a wheelbase of 110 inches or less.

Although we decided not to extend the rollover warning labeling requirement to other vehicles in the March 9 final rule, we have no objection to manufacturers voluntarily installing rollover warning labels in pickups, vans, or other vehicles. Rollovers occur in vehicles other than small and mid-sized utility vehicles, albeit at a lower rate.

NHTSA analyzed the statistics for percent rollovers per single vehicle crashes for vehicles with a wheelbase of ≤110 inches compared to vehicles with a wheelbase of >110 inches to determine the rollover rate for different vehicle types. The results are included in Table 1.

TABLE 1.—PERCENT ROLLOVER PER SINGLE VEHICLE CRASHES
[% RO/SVC]

	All	≤110″ wheelbase	>110″ wheelbase
Car	17.4	20.1	11.0
Utility Vehicle	48.9	57.5	9.5
Van	22.2	8.3	30.4
Pickup	37.5	41.4	25.6

We believe that manufacturers should be allowed to alert their drivers to the risk that the vehicles will roll over, the steps they can take to avoid that risk, and the steps they can take to reduce the chance of injury in the event of a rollover. While manufacturers may voluntarily install a rollover warning in vehicles other than utility vehicles with a wheelbase of 110 inches or less, S4.5.1(b)(3) prohibits them from installing them on the same side of the sunvisor as the air bag warning label. We believe that manufacturers should be able to voluntarily affix the rollover warning label in the exact same places the required label can be affixed. We are, therefore, amending the March 9 final rule to allow the voluntary installation of the rollover warning label on the same side of the sun visor as the air bag warning label in vehicles that are not required by 49 CFR 575.105 to have them.

F. Foreign Language Translations

In an April 8, 1999 letter, AAM asked that we allow foreign language translations of the new rollover warning label. AAM stated that this would be consistent with prior agency interpretations concerning the use of foreign languages on required labels.

We have long held that manufacturers may present information in addition to the required information as long as the information is presented in a way that does not obscure or confuse the meaning of the required information. The labeling requirement of the March 9 final rule requires manufacturers to supply the rollover warning information in English. However, once manufacturers meet this requirement, they may supply the same information in other languages, so long as it does not confuse consumers. Manufacturers may apply an additional rollover warning label in a foreign language and may include a foreign language translation of the required owner's manual information, in addition to the required English text.

We note that S4.5.1 of Standard No. 208 prohibits ''other information'' from being placed on the sunvisor with the air bag label. We want to make it clear that as long as the non-English language label is an exact translation of the required information, we do not interpret it to be ''other information''. Information that is not a translation of the required information is considered ''other information'' and is not permitted.

G. Voluntary early compliance

The effective date of today's rule is September 1, 1999. Manufacturers may, however, comply early with the requirements included in today's rule. If a manufacturer chooses to do so, it must comply with all of the requirements.

IV. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866. Further, this action has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

NHTSA believes that this rule will result in a minimal cost to manufacturers and consumers of utility vehicles with a wheel base of less than 110 inches since this rule only involves minor changes.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the impacts of this rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA believes this rule will have minimal economic impact.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The OMB Clearance number for the utility vehicle warning (49 CFR 575.105) is 2127–0049. NHTSA has considered the impact of the changes required by today's rule and determined that they will not have any effect on the

total burden hours imposed on the public by 49 CFR 575.105.

National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and does not have a disproportionate effect on children.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

We reviewed all relevant American National Standards Institute (ANSI) standards as part of developing the labeling and information requirements that are the subject of this document. We used the following voluntary consensus standard in developing the labeling and information requirements:

- American National Standard Institute (ANSI) standard for product safety signs and labels (ANSI Z535.4).

List of Subjects

49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends chapter V of Title 49 of the Code of Federal Regulations as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. In § 571.208, in S4.5.1, revise paragraph (b)(3) to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S4.5.1 * * *

* * * * *

(b) *Sun visor air bag warning label.*

(3) Except for the information on an air bag maintenance label placed on the visor pursuant to S4.5.1(a) of this standard, or on a utility vehicle warning label placed on the visor that conforms in content, form, and sequence to the label shown in Figure 1 of 49 CFR 575.105, no other information shall appear on the same side of the sun visor to which the sun visor air bag warning label is affixed. Except for the information in an air bag alert label placed on the visor pursuant to S4.5.1(c) of this standard, or on a utility vehicle warning label placed on the visor that conforms in content, form, and sequence to the label shown in Figure 1 of 49 CFR 575.105, no other information about air bags or the need to wear seat belts shall appear anywhere on the sun visor.

* * * * *

PART 575—CONSUMER INFORMATION REGULATIONS

3. The authority citation for Part 575 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

4. In Section 575.105 revise paragraph (d)(1)(ii) and add paragraphs (d)(1)(iii) and (iv), (d)(5) and (6) and Figure 2 to § 575.105 to read as follows:

§ 575.105 Vehicle rollover.

* * * * *

(d) *Required information.*

(1) *Rollover Warning Label.*

* * * * *

(ii) Vehicles manufactured on or after September 1, 1999 and before September 1, 2000. When the rollover warning label required by paragraph (d)(1)(i) of this section and the air bag warning label required by paragraph S4.5.1(b) of 49 CFR 571.208 are affixed to the same side of the driver side sun visor, either:

(A) the rollover warning label must be affixed to the right (as viewed from the driver's seat) of the air bag warning label and the labels may not be contiguous; or

(B) the pictogram of the air bag warning label must be separated from the pictograms of the rollover warning label by text, and

(*1*) the labels must be located such that the shortest distance from any of the lettering or graphics on the rollover warning label to any of the lettering or graphics on the air bag warning label is not less than 3 cm, or

(*2*) if the rollover warning and air bag warning labels are each completely surrounded by a continuous solid-lined border, the shortest distance from the border of the rollover warning label to the border of the air bag warning label is not less than 1 cm.

(iii) The manufacturer must select the option to which a vehicle is certified by the time the manufacturer certifies the vehicle and may not thereafter select a different option for that vehicle. If a manufacturer chooses to certify

compliance with more than one compliance option, the vehicle must satisfy the requirements applicable to each of the options selected.

(iv) Vehicles manufactured on or after September 1, 2000. When the rollover warning label required by paragraph (d)(1)(i) of this section and the air bag warning label required by paragraph S4.5.1(b) of 49 CFR 571.208 are affixed to the same side of the driver side sun visor the pictogram of the air bag warning label must be separated from the pictograms of the rollover warning label by text and:

(A) the labels must be located such that the shortest distance from any of the lettering or graphics on the rollover warning label to any of the lettering or graphics on the air bag warning label is not less than 3 cm, or

(B) If the rollover warning and air bag warning labels are each completely surrounded by a continuous solid-lined border, the shortest distance from the border of the rollover warning label to the border of the air bag warning label must be not less than 1 cm.

* * * * *

(5) *Combined Rollover and Air Bag Alert Warning.* If the warnings required by paragraph (d)(1) of this section and paragraph S4.5.1(b) of 49 CFR 571.208 to be affixed to the driver side sun visor are not visible when the sun visor is in the stowed position, a combined rollover and air bag alert label may be permanently affixed to that visor in lieu of the alert labels required by paragraph (d)(3) of this section and paragraph S4.5.1(c)(2) of 49 CFR 571.208. The combined rollover and air bag alert label must be visible when the visor is in the stowed position. The combined rollover and air bag alert warning must conform in content to the label shown in Figure 2 of this section, and must comply with the following requirements:

(i) The label must read:

AIR BAG AND ROLLOVER WARNINGS
Flip Visor Over

(ii) The message area must be black with yellow text. The message area must be no less than 20 square cm.

(iii) The pictogram shall be black with a red circle and slash on a white background. The pictogram must be not less than 20 mm in diameter.

(6) At the option of the manufacturer, the requirements in paragraph (d)(1)(i) for labels that are permanently affixed to specified parts of the vehicle may instead be met by permanent marking and molding of the required information.

BILLING CODE 4910–59–P

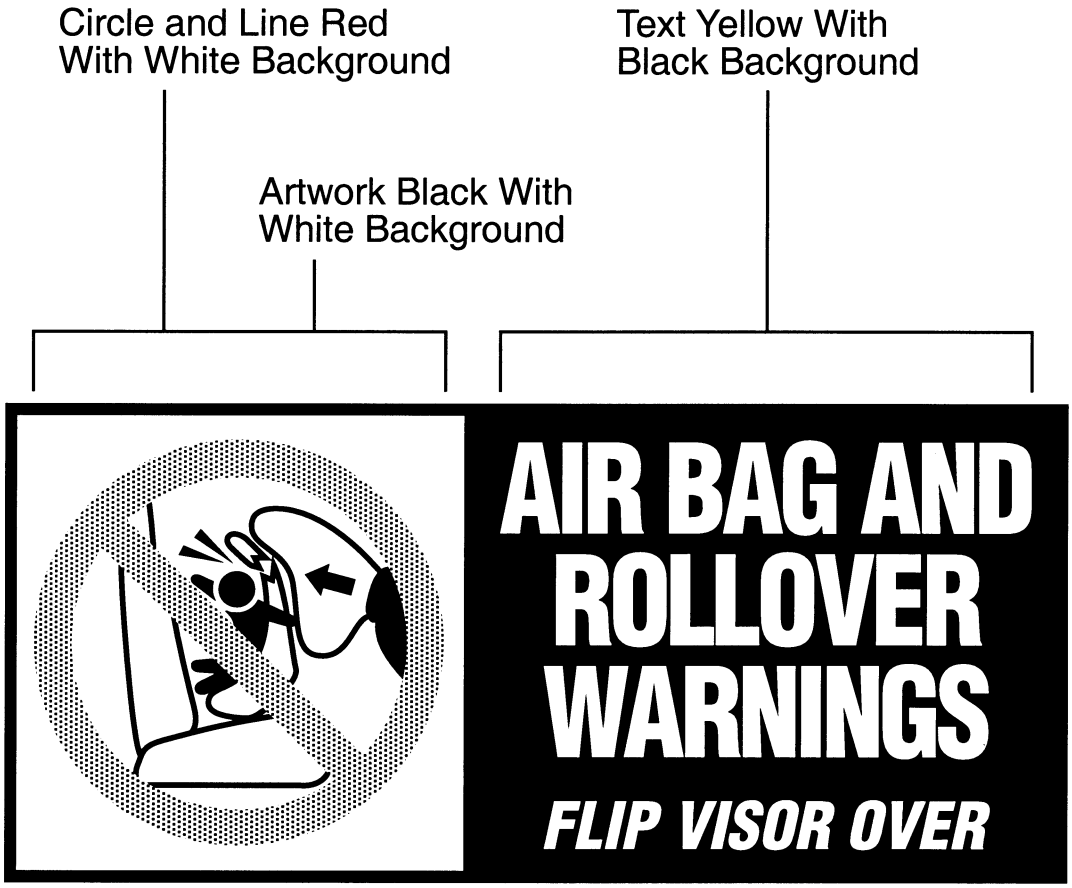

Figure 2. Sun Visor Label Visible When Visor is in Up Position.

Issued on: August 24, 1999.

Frank Seales, Jr.

Acting Deputy Administrator.

[FR Doc. 99–22365 Filed 8–25–99; 4:19 pm]

BILLING CODE 4910–59–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC09

Endangered and Threatened Wildlife and Plants; Threatened Status for Lake Erie Water Snakes (Nerodia sipedon insularum) on the Offshore Islands of Western Lake Erie

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (Act), we (the U.S. Fish and Wildlife Service) determine threatened status for the Lake Erie water snake (*Nerodia sipedon insularum*) found among the western Lake Erie offshore islands and adjacent waters in the U.S. and Canada. This listing does not extend the Act's protection to water snakes (*Nerodia sipedon*) found on the U.S. mainland, Canadian mainland, or the adjacent near-shore U.S. islands (e.g., Mouse Island and Johnson Island in Ohio). Small population size, persecution by humans, and habitat destruction are the primary threats. This action implements the Act's protections for the Lake Erie water snake. In addition, it identifies specific handling conditions that do not violate the Act's prohibitions.

EFFECTIVE DATE: The effective date of this rule is August 30, 1999 (see ''Effective Date'' section under **SUPPLEMENTARY INFORMATION** below).

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at offices of the U. S. Fish and Wildlife Service in Fort Snelling, Minnesota, and in Reynoldsburg, Ohio. The Minnesota office is located at the Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. The Ohio office is located at 6950–H Americana Parkway, Reynoldsburg, Ohio 43068.

FOR FURTHER INFORMATION CONTACT: Buddy B. Fazio, endangered species biologist, Ohio (614–469–6923 ext. 13) or Jennifer Szymanski, biologist, Division of Endangered Species, Minnesota (612–713–5342) at the above addresses.

SUPPLEMENTARY INFORMATION:

Background

This listing provides threatened status and Endangered Species Act protection to the Lake Erie water snake (*Nerodia sipedon insularum*) located on the western Lake Erie offshore islands and adjacent waters. This listing does not include water snakes (*N. sipedon*) found on the Canadian mainland, U.S. mainland, or adjacent near-shore islands due to those areas having high occurrence of northern water snakes (*N. s. sipedon*), intergrades between the two subspecies, and the low occurrence of Lake Erie water snakes (*N. s. insularum*). This means water snakes located on Ohio's Catawba/Marblehead Peninsula, Mouse Island and Johnson Island (also referred to as Johnson's Island), and Canada's Point Pelee are not protected under the Act by this listing. We define near-shore islands as those islands or rock outcrops located immediately adjacent to, or within 1.6 kilometers (km) (1 mile (mi)) of either mainland.

We define offshore islands as those 22 or more named and unnamed western Lake Erie islands and rock outcrops located greater than 1.6 (km)(1 mi) from the Ohio mainland and Ontario mainland. We define the offshore island's adjacent waters as the western Lake Erie waters surrounding the offshore islands and located greater than 1.6 (km)(1 mi) from the Ohio mainland and Ontario mainland. These islands and rock outcrops and their adjacent waters are located within boundaries roughly defined as 82°22′30″ North Longitude, 83°07′30″ North Longitude, 41°33′00″ West Latitude, and 42°00′00″ West Latitude. The U.S. Lake Erie offshore islands and rock outcrops include, but are not limited to, the islands called Kelleys, South Bass, Middle Bass, North Bass, Sugar, Rattlesnake, Green, Gibraltar, Starve, Gull, Ballast, Lost Ballast, and West Sister. Canadian Lake Erie offshore islands and rock outcrops of Lake Erie include, but are not limited to, the islands called Pelee, Middle, East Sister, Middle Sister, North Harbour, Hen, Chick, Big Chicken, and Little Chicken.

Lake Erie water snakes (*N. s. insularum*) were briefly described by Morse (1904) as *Natrix fasciata erythrogaster.* Conant and Clay (1937, 1963) described the Lake Erie water snake subspecies more fully. Lake Erie water snakes are uniformly gray or brown and have either no color pattern or have blotches or banding that are faded or reduced (Conant and Clay 1937, 1963; Camin and Ehrlich 1958; Conant 1982; Kraus and Schuett 1982; King 1987b, 1991). Color pattern variations among Lake Erie water snakes are thought to result from the combined effects of both natural selection and gene flow (King 1993b, 1993c; King and Lawson 1995). On the rocky shorelines of the western Lake Erie islands, water snakes with unbanded or reduced patterns appear to have a survival advantage compared to fully patterned water snakes (Camin *et al.* 1954; Camin and Ehrlich 1958; Ehrlich and Camin 1960; King 1992a). Female Lake Erie water snakes grow up to 1.1 meters (m) (3.5 feet (ft)) long and are larger than males. Newborn Lake Erie water snakes are the size of a pencil when born during late summer, or early fall.

Lake Erie water snakes use habitat composed of shorelines that are rocky or contain limestone/dolomite shelves and ledges for sunning and shelter (Conant and Clay 1937; Conant 1951; Thomas 1949; Camin and Ehrlich 1958; King 1986, 1987b). Shelter (refugia) occurs in the form of loose rocks, piled rocks, or shelves and ledges with cracks, crevices, and nearby sparse shrubbery (Thomas 1949; King 1986, 1992a). Lake Erie water snakes are found less often on shorelines composed of small stones, gravel or sand (Conant and Clay 1937; Conant 1938; King 1986). Certain types of rip-rap, armor stone, or docks made with rock cribs can serve as shelter for Lake Erie water snakes (Conant and Clay 1937; Conant 1938, 1982; King 1990; Service 1994), provided adequate space exists in these structures that is above Lake Erie's water and ice levels.

The Lake Erie water snake (*N. s. insularum*) and the northern water snake (*N. s. sipedon*) are separate subspecies. Northern water snakes (*N. s. sipedon*) are common and widely distributed in eastern North America, including the Ohio and Ontario mainland, whereas Lake Erie water snakes (*N. s. insularum*) have declined and occur primarily on the offshore islands of western Lake Erie (Schmidt and Davis 1941; Conant 1982; Kraus and Schuett 1982; King 1986, 1987b, 1989a, 1989b, 1991, 1993b, 1996; King and Lawson 1995; King 1997; King *et al.* 1997). Lake Erie water snakes have reduced or no color patterns, while northern water snakes have sharply defined band patterns (Conant and Clay 1937, 1963; Camin and Ehrlich 1958; Conant 1982; Kraus and Schuett 1982; King 1987b, 1991). Lake Erie water snakes occur on rocky limestone and dolomite shorelines; northern water snakes use more heavily vegetated locations with soil, mud or clay (Conant 1951; King 1986, 1987b; King and Lawson 1995). Lake Erie water snakes also have a different diet, a larger adult body size, lower growth rates, and shorter tails compared to northern water snakes (Conant 1951; Hamilton 1951; Langlois 1964; Drummond 1983; King 1986, 1989a, 1993a).

The geographic interface where both subspecies of water snake (*Nerodia sipedon*) occur is the Ohio mainland (the Catawba/Marblehead Peninsula) and its near-shore islands (Mouse Island and Johnson Island). Water snake populations in these areas have northern water snakes (*N. s. sipedon*), Lake Erie water snakes (*N. s. insularum*), and intergrades between the two subspecies (Conant and Clay 1937, 1963; Conant 1938; Camin and Ehrlich 1958; Kraus and Schuett 1982; King 1986, 1987a, 1987b; Pfingston 1991; Reichenbach 1992a, 1992b, 1997, 1998). Intergrades naturally occur on the Peninsula and near-shore islands because there is no barrier to prevent the two subspecies from interbreeding. Lake Erie water snakes (*N. s. insularum*) occur in this interface zone in low frequencies (Conant and Clay 1937; Camin and Ehrlich 1958; Kraus and Schuett 1982; King 1987b; Reichenbach 1997, 1998).

Approximately 95 percent of the Lake Erie water snake (*N. s. insularum*) population's gene pool occurs on the offshore islands of western Lake Erie (King 1998a, 1998b). The offshore islands are isolated from the Ohio and Ontario mainland by approximately 5 to 14 km (3 to 9 mi) of water. Although not a complete barrier, the distance from offshore islands to the mainland (and the near-shore islands) creates a natural barrier. This barrier maintains the integrity of the Lake Erie water snake gene pool by limiting interbreeding between offshore island Lake Erie water snakes and mainland and near-shore northern water snakes. Thus, species experts believe that the genetic pool on the western Lake Erie offshore islands is primarily Lake Erie water snake (Conant and Clay 1963 using data from Cliburn 1961; King 1986, 1987b, 1992a, 1992b, 1998a) and the genetic pool on the mainlands and near-shore islands is predominately northern water snake (*N. s. sipedon*).

Lake Erie water snake movements and related gene flow are lower among mainland and island sites compared to movements among islands (King 1987b; King and Lawson 1995). King (1987b) reports that all 202 water snakes, recaptured up to 1,146 days after initial capture, were found within 50 m to 300 m (164 ft to 984 ft) of the original capture site. No water snakes were observed to move among island study sites separated by as little as 1.3 km (.8 mi), confirming the observations of Fraker (1970) that water snakes practice high site fidelity. King (1987b) estimates that less than 3 percent of adult water snakes move among islands or among sites on a given island, each year, and thus, by inference, movement between near-shore islands/mainland and off-shore islands is likely very limited. King and Lawson (1995) estimated that, for each generation, an average 9.2 water snakes migrate between Pelee Island and the Ontario mainland, and 3.6 water snakes migrate between the islands and the Ohio mainland. Enserink (1997) notes that populations with 10 or more migrants per generation tend to not experience natural forces, such as natural selection, that promote speciation (i.e., a subspecies eventually evolving into a full species over geologic time). Thus, the Lake Erie water snake remains a unique insular population that is affected by the opposing forces of natural selection and gene flow (King and Lawson 1995).

The historic abundance of water snakes on the Lake Erie islands was first noted in descriptions by early travelers (McDermott 1947; Parker 1976). During the 1700s, the islands of western Lake Erie were called ''Les Iles aux Serpentes,'' the islands of snakes (McDermott 1947; Langlois 1964). Other accounts by early travelers describe islands with ''myriads (or 'wreaths') of water snakes basking in the sun'' or with water snakes ''sunning themselves in heaps, knots and snarls'' (Ballou 1878; Hatcher 1945; McDermott 1947; Parker 1976; Wright and Wright 1957:534). Morse (1904) noted that many of the water snakes on the islands of western Lake Erie were uniquely grey, unbanded individuals (at that time, *Natrix fasciata erythrogaster*).

The Lake Erie water snake population has declined over 150 years due to persecution and habitat alteration (Hatcher 1945, Langlois 1964, Conant 1982, Kraus and Schuett 1982; King 1986, 1987a, 1987b, 1990, 1998a, 1998b; King and Lawson 1995; King *et al.* 1997). One example is Middle Island, Ontario, where Thomas (1949) observed up to seven snakes per ''clump'' of shrubbery at ''close intervals'' over a distance of several hundred yards of limestone shoreline. King (1986) estimated a population size for Middle Island that is three to five times lower than the number of water snakes collected in a single day by Camin *et al.* (1954) or in two days by Ehrlich and Camin (1960). In another example, it took King (1986) a month or more on several islands to achieve sample sizes similar to that achieved by Conant and Clay (1937) or Camin and Ehrlich (1958) in a single day. Finally, in terms of numbers of water snakes per investigator hour, King (Service 1994) noted that Lake Erie water snake capture rates declined from 10 snakes per hour (during the 1930s through 1950s) to less than one snake per hour (during the early 1980s), a ten-fold decline over 30 to 50 years.

Recent data also show declines in population density (i.e., number of Lake Erie water snakes per km of shoreline) on three of the four U.S. islands most important to the water snake's long-term survival (King 1998a, 1998b). When compared to the 1986 population estimate (King 1986), the 1998 estimate indicates the overall Lake Erie water snake population continues to remain at a small size. Small population size makes the Lake Erie water snake population vulnerable to extinction or extirpation. (See discussions under the ''Issue 2'' and ''Factor E'' sections later in this document.)

The current distribution of Lake Erie water snakes is small compared to their historic distribution. The historic range of the Lake Erie water snake (*N. s. insularum*) included 22 or more offshore islands and rock outcrops of western Lake Erie, a portion of the Ontario mainland that includes Point Pelee, and shorelines of the Catawba/Marblehead Peninsula, Mouse Island, and Johnson Island in Ohio (Conant and Clay 1937, 1963; Conant 1938; Kraus and Schuett 1982; King 1986, 1987a, 1987b, 1998a). Water snakes were found on Green Island in 1930 (Conant 1982) and early museum records (Ohio State University F.T. Stone Laboratory collection) initially confirmed water snakes on West Sister Island. Today, Lake Erie water snakes no longer occur on the Ontario mainland and four islands: West Sister Island, Green Island, Middle Sister Island, and North Harbour Island (King 1986, 1998a, 1998b).

In summary, the Lake Erie water snake has declined in population abundance and in distribution. The current estimate for the U.S. population ranges from 1,530 to 2,030 adults and is restricted to only 8 islands (King 1998a, 1998b). Stated another way, 95 percent of the Lake Erie water snake population is currently restricted to an area with a diameter of less than 40 km (25 mi) comprising 12 western Lake Erie offshore islands in the U.S. and Canada combined (King 1986, 1987a, 1998a, 1998b).

Previous Federal Record

We identified the Lake Erie water snake as a category 2 candidate species in notices of review published in the **Federal Register** on September 18, 1985 (50 FR 37958) and on January 6, 1989 (54 FR 554). Our November 21, 1991, Notice of Review (56 FR 225), changed the snake's status to category 1 candidate. Prior to 1996, a category 2 species was one that we were

considering for possible addition to the Federal List of Endangered and Threatened Wildlife, but for which conclusive data on biological vulnerability and threat were not available to support a proposed rule. We stopped designating category 2 species in the February 28, 1996, Notice of Review (61 FR 7596). We now define a candidate species as a species for which we have on file sufficient information to propose it for protection under the Act (former category 1 classification).

On August 18, 1993, we published a rule proposing to list the Lake Erie water snake (*N. s. insularum*) as threatened (58 FR 43857). The original comment period ended on November 16, 1993, and the deadline for receipt of public hearing requests was October 4, 1993. An October 12, 1993, notice (58 FR 52740) extended the public comment and the hearing request deadline for 30 days. On May 13, 1994, we published in the **Federal Register** a notice of public hearing and reopening of the comment period (59 FR 25024). We held public hearings on South Bass Island, Ohio, on May 31, 1994, and in Port Clinton, Ohio, on June 1, 1994. The comment period closed on June 16, 1994.

On April 10, 1995, Congress enacted a moratorium on the processing of all final listing actions (Public Law 104–6) and rescinded $1.5 million from our listing budget, which further delayed action on the proposed rule. The Congressional moratorium continued until April 26, 1996, when President Clinton exercised authority given to him in the Omnibus Budget Reconciliation Act of 1996, waiving the moratorium.

During 1995, due to uncertainty as to the extent of the Congressional moratorium, we determined that the available data for the listing decision could have become outdated. To ensure responsible evaluation of current data, we and the Ohio Division of Wildlife funded a two-year study of the Lake Erie water snake population in 1996 and 1997, with some additional data collection and a final report due in 1998. We received the report from Dr. Richard King during June of 1998, and received an addendum to the final report in September of 1998.

On May 8, 1998, we published Listing Priority Guidance for Fiscal Years 1998 and 1999 (63 FR 25502). The guidance clarifies the order in which we will process rule-makings, giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. The processing of this final rule falls under Tier 2.

Summary of Comments and Recommendations

In the August 18, 1993, proposed rule and two subsequent notifications, we requested all interested parties (hereafter called participants) to submit factual reports or information that might contribute to development of a final rule. We contacted appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties in the United States and asked them to comment. We also notified Canadian officials at the Ontario Ministry of Natural Resources offices (located in Toronto, London, and Chatham) and at the Canadian Wildlife Service in Ottawa, Ontario. We published newspaper notices inviting public comment and notifying the public of pertinent hearings in the following newspapers—''The Port Clinton News Herald'' (Port Clinton, Ohio), ''The Sandusky Register'' (Sandusky, Ohio), ''The Cleveland Plain Dealer'' (Cleveland, Ohio), ''The Toledo Blade'' (Toledo, Ohio), and ''The Call and Post'' (Cleveland, Columbus, and Cincinnati, Ohio). We notified island residents of public hearings and the reopened June comment period by placing notices in their local U.S. Post Office boxes.

Public hearings were requested by Donald J. McTigue (of McTigue & Brooks, Attorneys at Law, Columbus, Ohio), representing Baycliff's Corporation, and by H. R. Clagg (President, Johnson's Island Property Owners Association, Marblehead, Ohio). In response, we held public hearings on May 31, 1994, at Put-in Bay, South Bass Island, Ohio, and on June 1, 1994, in Port Clinton, Ohio. Approximately 20 people attended the hearing at Put-in Bay, and approximately 50 people attended the hearing at Port Clinton.

We received comments and information from participants in the form of letters, reports, and oral testimony. Out of 96 total comments received, 89 supported listing the Lake Erie water snake as threatened, while seven did not support listing. We received comments from 2 State agencies, 4 universities, 2 zoos, 5 herpetologists, 2 environmental groups, 1 corporation, 2 private groups, 12 private citizens and 57 school children.

We address comments and oral statements received during the public hearings and comment periods in the following summary of issues. Comments of a similar nature are grouped into a single issue.

Issue 1—Some participants asked if other factors besides habitat loss and persecution, such as predation, pollution, or collecting, contributed to Lake Erie water snake declines.

Response—The effects of predation, pollution, and collecting on Lake Erie water snake population are not clear. We believe it is unlikely that natural predators contribute significantly to Lake Erie water snake declines. Although Lake Erie water snakes are undoubtedly taken as prey by gulls, herons, other birds, and other snakes (Camin and Ehrlich 1958; Goldman 1971; Hoffman and Curnow 1979; King 1986, 1987b, 1993c), the mortality is believed negligible and not likely to adversely affect Lake Erie water snake populations.

Although some water snakes were documented to contain or be adversely affected by certain pollutants (Herald 1949, DeWitt *et al.* 1960, Peterle 1966, Meeks 1968, Novakowski *et al.* 1974), the role of pollution in the decline of Lake Erie water snakes is not clear. To date, comprehensive pollution toxicity studies have not been conducted.

The impact of scientific collecting on the Lake Erie water snake population is also unknown. The number of museum collections and the numerous reports of collections within scientific literature suggest the Lake Erie water snake population can withstand some level of scientific collection. We cannot discount, however, the possible negative impacts of over-collection on the population, particularly if the population declines further. Federal listing will curtail superfluous scientific collecting, as well as any other collecting activity.

Issue 2—Some participants believe the Lake Erie water snake population has seriously declined, while others believe the population has not declined.

Response—The decline of Lake Erie water snakes from historical levels is well documented (Hatcher 1945; McDermott 1947; Ehrlich and Camin 1960; Conant and Clay 1963; Langlois 1964; Conant 1982; Kraus and Schuett 1982; Reichenback 1992; Service 1994; King 1986, 1998a; King *et al.* 1997). In addition to obvious decline in abundance from earlier this century, the Lake Erie water snake's geographic distribution has been restricted. The Lake Erie water snake historically

occurred on the Ohio mainland, the Ontario mainland, 2 or more near-shore Ohio islands, and 22 or more offshore islands and rock outcrops. Today, the Lake Erie water snake does not occur on the Ontario mainland, has disappeared from four islands, and has declined significantly on the remaining islands (King 1986, 1987a, 1998a, 1998b; King *et al.* 1997).

We recognize the population estimates provided by King (1986, 1987a, 1998a, 1998b) and Reichenbach (1997, 1998) as the best available scientific information with respect to current estimates of Lake Erie water snake population size in the United States. The Lake Erie water snake population size is currently estimated to be 1,530 to 2,030 adults (King 1998a, 1998b). When compared to the 1986 population estimate (King 1986), the 1998 estimate verifies that the Lake Erie water snake population has remained at a small size for over a 12-year period (King 1998).

The Lake Erie water snake population suffers from three problems. First, the Lake Erie water snake continues to decline in terms of population density (i.e., water snakes per km of shoreline) on three out of four U.S. islands most important to the water snake's long-term survival (King 1998a, 1998b). Second, current reproduction and survival rates appear insufficient to allow the population to increase to levels higher than existing vulnerable thresholds. Third, low population densities and insular distribution of the Lake Erie water snake render it vulnerable to extinction or extirpation.

Issue 3—Participants asked for an explanation of characteristics that distinguish the Lake Erie water snake subspecies (*Nerodia sipedon insularum*) from the northern water snake subspecies (*Nerodia sipedon sipedon*).

Response—The two water snake subspecies are distinguished from each other by habitat, behavioral, and morphological differences. Lake Erie water snakes occur on rocky limestone and dolomite shorelines with some plants, whereas northern water snakes use more heavily vegetated locations with soil, mud or clay (Conant 1951; King 1986, 1987b; King and Lawson 1995). Lake Erie water snakes also have a different diet, a larger adult body size, lower growth rates, and shorter tails compared to northern water snakes (Conant 1951; Hamilton 1951; Langlois 1964; King 1986, 1989a, 1993a). Furthermore, Lake Erie water snakes are uniformly gray or brown and either have no color pattern or have blotches or banding that are faded or reduced, whereas northern water snakes have sharply defined, complete banding patterns (Conant and Clay 1937, 1963; Camin and Ehrlich 1958; Conant 1982; Kraus and Schuett 1982; King 1987b, 1991). It is important to note, however, that at locations where the two subspecies co-occur, subspecies intergrades exist which are difficult to identify as either a Lake Erie water snake or northern water snake.

Issue 4—Some participants inquired about the status of the Lake Erie water snake on Johnson Island and the Catawba/Marblehead Peninsula. The participants also asked if these locations are within the documented range of the Lake Erie water snake.

Response—The Peninsula and two near-shore islands (i.e., Johnson Island and Mouse Island) are within the current and historic range of the Lake Erie water snake (Kraus and Schuett 1982; King 1986; King *et al.* 1997; Reichenbach 1998). However, the core gene pool comprising 95 percent of the Lake Erie water snake population occurs on the off-shore islands (i.e., islands located more than one mile from the Ohio or Ontario mainland) of western Lake Erie (King 1986, 1998). The near-shore islands and mainland locations contain a gene pool dominated by northern water snakes (*N. s. sipedon*) with a much lower frequency of Lake Erie water snakes (*N. s. insularum*) and intergrades between the two subspecies (Conant and Clay 1937, 1963; Conant 1938; Conant 1982; Camin and Ehrlich 1958; Kraus and Schuett 1982; King 1986; Pfingston 1991; Reichenbach 1997, 1998).

Issue 5—Some participants believe that water snakes on Ohio's Catawba/Marblehead Peninsula, Mouse Island and Johnson Island should be included in the Lake Erie water snake listing as threatened.

Response—In responding to Issues 3 and 4, above, we explain that the Peninsula, Johnson Island, and Mouse Island comprise a zone dominated by the northern water snake (*N. s. sipedon*). This is because these areas lack the natural barrier, distance from the mainland, that buffers the Lake Erie water snake populations on the offshore islands. Johnson Island located in Sandusky Bay is 480 m (1600 ft) from the Catwaba/Marblehead peninsula that separates it from the other offshore islands. A rip-rap lined causeway connects Johnson Island to the Catwaba/Marblehead peninsula, facilitating the movement of northern water snakes to Johnson Island. Mouse Island is located less than 300 m (1000 ft) from the Ohio shore. We believe that the protection of the offshore populations ensures the long-term survival of the Lake Erie water snake (*N. s. insularum*).

Issue 6—Some participants asked that ''Critical habitat'' be declared for Lake Erie water snakes.

Response—As explained later in this rule under the ''Critical Habitat'' section, we believe designation of critical habitat is not prudent.

Issue 7—Some participants believe water snakes are a nuisance, poisonous, and dangerous to small children, adults, and pets.

Response—The Lake Erie water snake may appear dangerous because of its large body size and defensive temperament. However, when approached by humans it will choose escape over confrontation, if possible. If escape is not possible, like any wild animal, it will try to protect itself. The Lake Erie water snake is not poisonous and does not have fangs; instead, the snake has small teeth that give a pinching bite. In 1994, we and the Ohio Division of Wildlife began a public awareness campaign on the Lake Erie islands. This campaign encourages adults and children to respect and not handle the Lake Erie water snake just as they would respect other wild animals.

Issue 8—Some participants asked if artificial structures or artificial habitat can benefit Lake Erie water snakes. Participants also asked if the presence of artificial structures would cause the Lake Erie water snake subspecies to expand its range into locations where it did not previously occur.

Response—Certain types of artificial habitat (rip-rap, certain armor stone, rock piles, or docks made with rock-filled cribs) may provide shelter for Lake Erie water snakes (Conant and Clay 1937; Conant 1938, 1982; King 1990; Service 1994). However, the extent to which such artificial refugia benefit Lake Erie water snakes is currently unknown. The conservation of Lake Erie water snakes can also be aided by incorporating rock-oriented designs into shoreline developments and associated erosion control structures. Such measures have already been adopted by one developer on Johnson Island (Pfingston 1991; Reichenbach 1992a, 1992b, 1997, 1998). These structures, however, are unlikely to precipitate the expansion of the Lake Erie water snake (*N. s. insularum*) population because of outside pressures such as habitat degradation, natural selection, and natural gene flow from the northern water snake (*N. s. sipedon*).

Issue 9—Some participants asked if listing Lake Erie water snakes as threatened will cause additional permits to be required for shoreline development. Others asked if listing

will prevent landowners from developing their land.

Response—The purpose of the Act is to conserve species such as the Lake Erie water snake (*N. s. insularum*) and the ecosystems upon which they depend. To achieve this goal, it is necessary to minimize the loss of Lake Erie water snakes and their habitat. Thus, the Act affords protection against take (i.e., killing, injuring, capturing, etc.) of Lake Erie water snakes. Projects that will harm individual Lake Erie water snakes or destroy their habitat will require an incidental take permit from us. Under the ''Available Conservation Measures'' section of this notice, we identify activities likely to result in take of Lake Erie water snakes. However, many of these actions, such as construction of shoreline docks, placement of stone or armor plates to prevent erosion, and other shoreline developments, already require a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act or section 10 of the Rivers and Harbors Act. Pursuant to the Endangered Species Act, it is the Corps' responsibility to ensure that issuance of a Corps permit will not jeopardize Lake Erie water snakes on the offshore islands. If permit issuance by the Corps may affect the water snake or other federally listed species, the Corps must enter into section 7 consultation with us. Under section 7 consultation, we work with the Corps and project proponent to find solutions that allow the project to proceed while avoiding jeopardy to listed species. This often means adopting project modifications. If a shoreline project does not require a Corps permit and does not involve Federal funding or other Federal authorization or other action, but will take water snakes, the landowner may be required to obtain an incidental take permit under section 10 of the Act. However, we believe most minor shoreline projects as they are currently undertaken will require few modifications.

Issue 10—A few participants asked if listing Lake Erie water snakes as threatened will cause shoreline property owners to lose their homes or their land.

Response—Listing Lake Erie water snakes as threatened will not cause any landowner or homeowner to lose his/her home or land.

Issue 11—Some participants are concerned that listing Lake Erie water snakes might cause restrictions to be placed against land access or fishing activities.

Response—We do not foresee such restrictions to be enacted. We do not consider unintentional capture or entanglement as a result of recreational fishing to be a violation of the Act's prohibition on take provided the snake is immediately freed and released (see the ''Available Conservation Measures'' section). It is our policy (June 3, 1996; 61 FR 27978) to pursue cooperative partnerships to minimize and resolve conflicts between the implementation of the Act and recreational fishing activities.

Issue 12—Some participants asked which types of shoreline habitat will be affected by listing Lake Erie water snakes as threatened.

Response—Lake Erie water snakes can be found along any shoreline of the islands of western Lake Erie. However, they occur more often on or near rocky shorelines or shorelines composed of limestone/dolomite shelves and ledges (Conant and Clay 1937; Thomas 1949; Conant 1951; Camin and Ehrlich 1958; King 1986, 1987b). The Lake Erie water snake is protected by the Act on the shorelines of all islands and rock outcrops of western Lake Erie, except Mouse Island, Johnson Island, or any other islands and rock outcrops within 1.6 km (1 mi) of the Ohio or Ontario mainland.

Issue 13—Some participants expressed concern about being prosecuted for removing a Lake Erie water snake from their basement or yard, or from a fishing hook.

Response—Provided that private individuals follow the specific handling conditions identified in this rule, the Service will not prosecute them for removing Lake Erie water snakes from their property or from accidental capture while fishing (see the ''Available Conservation Measures'' section).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that the Lake Erie water snake (*Nerodia sipedon insularum*) on western Lake Erie offshore islands and adjacent waters (i.e., offshore islands and their surrounding waters that are more than 1.6 km (1 mi) from the Ohio and Ontario mainland) should be classified as a threatened species. We followed procedures found in section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Lake Erie water snake (*Nerodia sipedon insularum*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Habitat destruction is a major cause of the decline of Lake Erie water snakes (Ashton 1976; Kraus and Schuett 1982; King 1986; King *et al.* 1997). During the past 60 years, shoreline habitat important to the water snakes has been significantly altered, degraded, and developed through the construction of shoreline cottages, marinas, docks, and sea walls, the filling of lagoons, and the mining of quarries (Hatcher 1945; Core 1948; Kraus and Schuett 1982; King 1985, 1986; R. Conant, University of New Mexico, *in litt.* 1993; King *et al.* 1997). Current development on many western Lake Erie islands (e.g., Kelleys, North Bass, Middle Bass, South Bass, Pelee) is resulting in increased loss of Lake Erie water snake habitat. Some examples of currently proposed developments affecting Lake Erie water snake habitat include a large resort proposed for Middle Bass Island, a 1,220 m (4,000 ft) long sea wall proposed for North Bass Island, and airport expansions proposed for Kelleys Island and Middle Bass Island (Service, *in litt.* 1999).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We know of no recreational or commercial overutilization of the Lake Erie water snake. The impact of scientific collecting on the Lake Erie water snake population is not known, but negative impacts from possible over-collecting cannot be discounted. The historical collection of Lake Erie water snakes is well documented, with reports of from 40 water snakes (Hamilton 1951; Langlois 1964; Conant 1982; Ohio Division of Natural Areas and Preserves, unpublished data, 1993) to hundreds of water snakes (Conant and Clay 1937, 1963; Conant 1938, 1951, 1982; Camin and Ehrlich 1958) collected per island during repeated visits. If the Lake Erie water snake population continues to decline, all sources of mortality, including collecting, will be problematic for the species (see ''Factor E'').

C. Disease or Predation

We are not aware of any evidence showing that natural predation has contributed significantly to the decline of Lake Erie water snakes. Although predation by herring gulls (*Larus argentatus*), great blue herons (*Ardea herodias*), robins (*Turdus migratorius*),

and blue racers (*Coluber constrictor*) have occurred (Camin and Ehrlich 1958; Goldman 1971; Hoffman and Curnow 1979; King 1986, 1987b, 1993c), this very low level of mortality is not likely to have a significant affect on the Lake Erie water snake population. However, as stated above, populations like the Lake Erie water snake that occur at low densities can be adversely impacted by any mortality factor, whether natural or human-caused.

Little is known about the impacts of disease on water snakes (*Nerodia sipedon*). We believe disease is currently only a minor problem for Lake Erie water snakes. However, we recognize that the synergistic effects of pollutants, other environmental stress (such as habitat loss), and the locally dense nature of some localized sub-populations could expose water snakes to significant disease problems.

D. The Inadequacy of Existing Regulatory Mechanisms

Until now, Lake Erie water snakes have had no legal protection from take, harm, or habitat loss within the United States. The Ohio Division of Wildlife (ODOW) granted State threatened status (chapter 119 of the Ohio Revised Code) to the Lake Erie water snake (*N. s. insularum*) in 1990 but this is an administrative designation that does not confer legal protection. The Lake Erie water snake is listed as endangered by the Society for the Study of Amphibians and Reptiles but this also confers no legal protection. A small fraction of the land area on the western Lake Erie islands comprises public land. The Ohio State University and the Ohio Department of Parks and Recreation (R.B. King, Northern Illinois University, *in litt.* 1993) own property that is inhabited by Lake Erie water snakes, and thus is minimally protected from habitat destruction.

The Lake Erie water snake (*N. s. insularum*) subspecies is currently protected in Ontario, Canada, under the provincial Endangered Species Act, R.S.O. 1980, c. 138, in 1977 (Regulation 328; Regulation 195/88 which amends Regulation 287 of Revised Regulations of Ontario). The Lake Erie water snake (*N. s. insularum*) subspecies is also listed as federally endangered by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). In addition, the species *Nerodia sipedon* is protected under the Ontario Game and Fish Act (Regulation 520; Regulation 113/88 which amends Regulation 397/84 of Revised Regulations of Ontario). Although these regulations provide some protection for Lake Erie water snakes at a few sites in Canada, the majority of the subspecies' island habitat remains unprotected, including 13 islands within the United States. Of the 5 core islands most important to the lake Erie water snake, 4 occur in the United States with little or no protection for the species and its habitat.

Three preserves exist in Ontario, Canada, which are inhabited by Lake Erie water snakes and protected from habitat loss. On Pelee Island, Ontario, the Lake Erie water snake is protected by Provincial preserves at Fish Point and Lighthouse Point (I. Bowman and P. Prevett, Ontario Ministry of Natural Resources, pers. comm. 1994). The Essex Region Conservation Authority also set aside preserve land on Pelee Island which benefits water snakes and local plant species (D. Krouse, ERCA, pers. comm. 1994). East Sister Island is a Lake Erie water snake Provincial preserve, but the population of water snakes on the island is small and declining (King 1986; I. Bowman and P. Prevett, Ontario Ministry of Natural Resources, pers. comm. 1994; R. King, Northern Illinois University, pers. comm. 1998). We believe the regulatory mechanisms are inadequate because of the small number of water snakes in preserves and the vulnerability from lack of regulatory protection outside of preserves.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Persecution by humans is the most significant and well documented factor in the decline of Lake Erie water snakes (Conant 1982, Kraus and Schuett 1982, King 1986, King *et al.* 1997; Service *in litt.* 1998). During the 1800s, pigs were released on some islands to exterminate snakes (Hatcher 1945, McDermott 1947). All snake species were eradicated from Rattlesnake Island by 1930 (Conant 1982), but a few water snakes recently moved to the island (King 1987b; King *et al.* 1997). Ehrlich and Camin (1960) told of a campaign of extermination waged against water snakes on Middle Island. Conant and Clay (1963) noted that persecution of island water snakes was severe. Persecution by humans is still a serious problem on several islands (Service *in litt.* 1998). The effects of past and current persecution are evident today and are a threat to the continued existence of the water snake.

The influences of factors A through E, above, on the Lake Erie water snake are exacerbated by the small size of the population. The current low population densities and insular distribution of Lake Erie water snakes make them vulnerable to extinction or extirpation from catastrophic events, demographic variation, negative genetic effects, and environmental stresses such as habitat destruction and extermination (Shaffer 1981; King 1987b, 1998b; Dodd 1993; Nunney and Campbell 1993; King *et al.* 1997). Though populations naturally fluctuate, small populations are more likely to fluctuate below the minimum viable population threshold needed for long-term survival. Likewise, chance variation in age and sex ratios can cause death rates to exceed birth rates, causing a higher risk of extinction in small populations. Finally, decreasing genetic variability in small populations increases the vulnerability of a species to extinction due to inbreeding depression (decreased growth, survival, or productivity caused by inbreeding) and genetic drift (loss of genetic variability that takes place as a result of chance). A recent study of snakes (adders) in Sweden found that inbreeding depression in isolated populations resulted in smaller litter size, higher proportion of deformed and stillborn offspring, and lower degree of genetic heterozygosity (Madsen *et al.* 1996), which in turn cause reduced fertility and survivorship. Thus, in small populations, environmental, demographic, and genetic changes can result in an accelerating slide toward extinction.

Mace and Lande (1991) describe a system used to categorize the status of a species as Vulnerable, Endangered, or Critical according to risk of extinction criteria. Applying these criteria to the Lake Erie water snake population, King (1998b) suggests the population in the United States qualifies as Endangered or Vulnerable. Mace and Lande (1991) define Vulnerable as having a 10 percent probability of extinction within 100 years, and define Endangered as having a 20 percent probability of extinction within 20 years or 10 generations (whichever is longer). King (1998b) indicates that the Lake Erie water snake population meets these criteria because of (1) the decline of island sub-populations of the snakes, (2) accelerated habitat alteration (e.g., development) during the 1990s, and (3) potential ecological interactions with introduced species. Zebra mussels (*Dreissena polymorpha*) and round gobies (*Neogobius melanostmus*) can reduce water snake prey (i.e., fish) availability (Dermott and Munawar 1993; Fitzsimons *et al.* 1995; Jude *et al.* 1995).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Lake Erie water snake in making this final listing determination. Based on this evaluation, we believe the Lake Erie water snake

(*Nerodia sipedon insularum*) meets the criteria for protection under the Act on the basis of persecution, destruction and modification of habitat, curtailment of its range, significant population decline from historical levels, flat and vulnerable population status in the 1990s, and the inadequacy of regulatory mechanisms. The present distribution and abundance of the Lake Erie water snake is at risk given the potential for these impacts to continue. Therefore, based on this evaluation, the preferred action is to list the Lake Erie water snake as a threatened species. The Act defines a threatened species as one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. Federal threatened status for the Lake Erie water snake is effective immediately upon publication of this final rule (see ''Effective Date'' section below).

Effective Date

In accordance with 5 U.S.C. 553(d)(3), we have found good cause to make the effective date of this rule immediate. Because of low Lake Erie water snake population densities, continuing eradication by people, and accelerating habitat destruction, protection provided by the Act is granted to Lake Erie water snakes (*Nerodia sipedon insularum*) located on the western Lake Erie offshore islands and adjacent waters immediately upon publication of this final rule. We believe eradication efforts and habitat destruction, in particular, would temporarily intensify if the effective date of the Act's protection is delayed by the normal 30 days after rule publication. We also believe that this sudden increase in water snake persecution and habitat destruction would seriously jeopardize the already small, vulnerable Lake Erie water snake population to the extent that the long-term recovery process would be irreversibly impaired.

Critical Habitat

Section 3 of the Act defines critical habitat as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We find that designation of critical habitat is not prudent for the Lake Erie water snake for both reasons stated above.

Potential benefits of critical habitat designation derive from section 7(a)(2) of the Act, which requires Federal agencies, in consultation with us, to ensure that their actions are not likely to jeopardize the continued existence of listed species or to result in the destruction or adverse modification of critical habitat of such species. Critical habitat designation, by definition, directly affects only Federal agency actions. Since the Lake Erie water snake is semi-aquatic, Federal actions that might affect this species and its habitat include those with impacts on island shoreline habitat and water quality. Most activities that occur would be subject to review under section 7(a)(2) of the Act, regardless of whether critical habitat was designated. The Lake Erie water snake has become so restricted in distribution that any significant adverse modification or destruction of occupied habitats would likely jeopardize the continued existence of this species. This would also hold true as the species recovers and its numbers increase. As part of the development of this rule, Federal and State agencies were notified of this species' general distribution, and we requested that they provide data on proposed Federal actions that might adversely affect the species. Should any future projects be proposed in areas inhabited by this snake, the involved Federal agency will already have the distributional data needed to determine if its action may impact the species, and if needed, we will provide more specific distribution information. Therefore, habitat protection for the Lake Erie water snake can be accomplished through the section 7 jeopardy standard, and there is no benefit in designating currently occupied habitat of this species as critical habitat.

Though critical habitat designation directly affects only Federal agency actions, controversy resulting from critical habitat designation has been known to reduce private landowner cooperation in the management of species listed under the Act. Critical habitat designation could affect landowner cooperation within habitat currently occupied by the snake and in areas unoccupied that might be needed for recovery. The publication of critical habitat maps in the **Federal Register** and local newspapers, and other publicity or controversy accompanying critical habitat designation may increase the potential for persecution as well as other collection threats. This applies to currently occupied habitat and any unoccupied habitat that were to be designated and subsequently recolonized by the species. Factor ''E'' of the ''Summary of Factors Affecting the Species'' section details the significant human persecution threats that have affected and continue to affect Lake Erie water snakes.

Based on the above analysis, we have concluded that critical habitat designation would provide little additional benefit for this species beyond those that would accrue from listing under the Act. We also conclude that any potential benefit from such a designation would be offset by an increased level of vulnerability to collecting, persecution, and by a possible reduction in landowner cooperation to manage and recover this species. Therefore, the designation of critical habitat for Lake Erie water snake is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States. The Act also requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against take of species and harm to species are discussed, in part, below.

Following listing, a number of recovery actions may be initiated by us, in cooperation with the State of Ohio and numerous other parties. Some possible recovery actions are as

follows—(1) continuation of a public outreach program directed toward island residents and visitors; (2) habitat protection measures, as needed; (3) voluntary conservation agreements with landowners; (4) design and testing of artificial refugia; (5) increased law enforcement efforts; (6) voluntary land acquisition or conservation easements from willing sellers; (7) monitoring studies; (8) winter hibernation studies; (9) reintroduction of Lake Erie water snakes to appropriate locations; and (10) captive rearing.

A public outreach program by us and the Ohio Division of Wildlife has been active on the Lake Erie islands since 1994. The program encourages a ''live and let live'' attitude for snakes living among island residents and visitors. A poster contest, outdoor sign campaign, and personal contacts are helping island residents and visitors realize that Lake Erie water snakes are not poisonous and pose little threat to people. We look forward to the continuing success of this public outreach program as part of the overall effort to achieve recovery of the Lake Erie water snake.

Listing Lake Erie water snakes as threatened provides much needed coordination and legal protection. Federal threatened status for Lake Erie water snakes will automatically result in State of Ohio endangered status, triggering effective State legal protection against take. Threatened status in the United States will facilitate Federal coordination for Lake Erie water snakes in the form of partnerships with landowners, planning and management with Canadian wildlife officials, consultations on Federal projects (section 7 of the Act), enforcement (section 9 of the Act), conservation planning (section 10 of the Act), and permits (section 10 of the Act).

Section 7(a) of the Act, requires Federal agencies to evaluate their actions with respect to any species, and its critical habitat (if declared), that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. Possible Federal actions may include projects, activities, and permit issuance by the Corps, the Natural Resources Conservation Service, the U.S. Environmental Protection Agency, the U.S. military services, the National Park Service, our Ottawa National Wildlife Refuge, and Federal agency participation in the Great Lakes Initiative, or other cooperative U.S. efforts involving Canadian governments.

The section 7 consultation process will play an important role in recovery of the Lake Erie water snake. The resulting habitat protection, habitat restoration, education of agency personnel, practical seasonal recommendations for construction activity, and beneficial project designs are vital for the Lake Erie water snake recovery. Beneficial shoreline projects contain designs that utilize rock and vegetation to provide shelter or forage areas for Lake Erie water snakes. Examples of potentially beneficial project designs are docks with rock-filled cribs, shoreline erosion barriers that utilize medium to large size stone, and reefs beneficial to small fish and amphibians that allow Lake Erie water snakes to safely feed.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Under the Act, permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are described in 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, for the enhancement or propagation or survival of the species, or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is our policy (July 1, 1994; 59 FR 34272) to identify to the maximum extent practicable, at the time a species is listed, those activities that do or do not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities on the offshore islands and adjacent waters of western Lake Erie. We believe that, based on the best available information, the following actions will not result in a violation of section 9 with respect to Lake Erie water snakes—(1) brief handling necessary to transfer individual water snakes from roads, sidewalks, structures, yards, and watercraft to adjacent habitat upon immediate release; (2) brief handling necessary to free and immediately release to adjacent habitat a water snake unintentionally hooked or entangled in fishing equipment; (3) non-harmful actions that encourage water snakes to leave, stay off, or keep out of a residence (including swimming pools and yards), a business building, the top decks of docks, foot paths, and water equipment (including boats, rafts, swimming decks, water intakes, and recreational gear); for example, a homeowner using a pool net pole to gently nudge a water snake away from his property; (4) actions that may affect offshore island water snakes and are authorized, funded or carried out by a Federal agency, when conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act; (5) actions authorized by a section 10 permit under the Act.

We believe violations of section 9 of the Act include, but are not limited to, the following actions on the Lake Erie offshore islands conducted without a section 10 permit under the Act—(1) intentional killing or injuring of water snakes by any means; (2) harassing water snakes in any offshore island or adjacent water habitat; (3) unauthorized collecting or handling of the water snake; (4) altering or destroying shoreline water snake habitat, including adjacent vegetation; (5) illegal discharge or dumping of toxic chemicals or other pollutants into areas occupied by the water snake.

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056 (612–713–5350; fax 612–713–5292).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We

published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein, as well as others, is available upon request (see **ADDRESSES** section).

Authors

The primary authors of this proposed rule are Buddy B. Fazio (614–469–6923) of our Reynoldsburg, Ohio office, and Jennifer Szymanski (612–713–5342) of our Minnesota Regional Office (see **ADDRESSES** section.)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following to the List of Endangered and Threatened Wildlife, in alphabetical order under REPTILES:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
*	*	*	* *		*	*	
Snake, Lake Erie water.	*Nerodia sipedon insularum.*	U.S.A. (OH), Canada (Ont.).	Lake Erie offshore Islands and their adjacent waters (located more than 1 mile from mainland)—U.S.A. (OH), Canada (Ont.).	T	665	N/A	N/A
*	*	*	* *		*	*	

Dated: August 16, 1999

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 99–22459 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF24

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1999–2000 Early Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special early season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 1, 1999.

ADDRESSES: You may inspect comments received, if any, on the proposed special hunting regulations and tribal proposals during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. You should send communications regarding the documents to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1714).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the August 13, 1999, **Federal Register** (64 FR 44384), we proposed special migratory bird hunting regulations for the 1999–2000 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by non-tribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the May 3, 1999, **Federal Register** (64 FR 23742), we requested that tribes desiring special hunting regulations in the 1999–2000 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the early-season proposals. Late-season hunting will be addressed in late-September. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

Status of Populations

In the August 13 **Federal Register**, we reviewed the status for various populations for which early seasons were proposed. This information included brief summaries of the May Breeding Waterfowl and Habitat Survey and population status reports for blue-wing teal, Canada goose populations hunted in September seasons, sea ducks, sandhill cranes, woodcock, mourning doves, white-winged doves, white-tipped doves, and band-tailed pigeons. As a result of these status, we have responded by proposing Flyway frameworks that are essentially the same as those of last season for the 1999–2000 waterfowl hunting season (August 27, 1999, **Federal Register**). The tribal seasons established below are commensurate with the population status.

Comments and Issues Concerning Tribal Proposals

For the 1999–2000 migratory bird hunting season, we proposed regulations for 22 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early and late-season elements. However, as noted earlier, only those with early-season proposals are included in this final rulemaking; 15 tribes have proposals with early seasons. Comments and revised proposals received to date are addressed in the following section. The comment period for the proposed rule, published on August 13, 1999, closed on August 23, 1999. Because of the necessary brief comment period, we will respond to any comments received on the proposed rule and/or these early-season regulations not responded to herein in the September late-season final rule.

We received two comments regarding the notice of intent published on May 3, 1999, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members. Both of these comments were addressed in the August 13 proposed rule.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the ''Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)'' was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement, the ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)'' was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). Copies of these documents are available from us at the address indicated under the caption **ADDRESSES**. In addition, an August 1985 Environmental Assessment titled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the same address.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *'' Consequently, we conducted consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. Our biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES.**

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996

National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request.

Executive Order (E.O.) 12866

Collectively, the rules covering the overall frameworks for migratory bird hunting are economically significant and have been reviewed by the Office of Management and Budget (OMB) under E.O. 12866. This rule is a small portion of the overall migratory bird hunting frameworks and was not individually submitted and reviewed by OMB under E.O. 12866.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1) and this rule will be effective immediately.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 9/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 9/30/2000). The information from this survey is used to estimate the magnitude, the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, these rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship with Tribes

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals received in response to the May 3 request for proposals and the August 13 proposed rule, we have consulted with all the tribes affected by this rule.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the tribes would have insufficient time to communicate these seasons to their member and non-tribal hunters and to establish and publicize the necessary regulations and procedures to implement their decisions.

We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication.

Therefore, under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), we prescribe final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

1. **Authority:** 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

(**Note:** The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature).

2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Non-tribal Hunters)

Doves

Season Dates: Open September 1, close September 15, 1999; then open November 19, 1999, close January 3, 2000.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

General Conditions: A valid Colorado River Indian Reservation hunting permit is required for all persons 14 years and older and must be in possession before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Non-tribal Hunters)

Sandhill Cranes

Season Dates: Open September 18, close October 24, 1999.

Daily Bag Limit: 3 sandhill cranes.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in their possession while hunting.

General Conditions: The waterfowl hunting regulations established by this final rule apply only to tribal and trust lands within the external boundaries of the reservation. Tribal and non-tribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

(c) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only) All seasons in Minnesota, 1854 Treaty Zone

Ducks and Mergansers

Season Dates: Open September 11, close November 23, 1999.

Daily Bag Limit for Ducks: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks; 4 redheads, 4 pintails and 2 canvasbacks.

Daily Bag Limit for Mergansers: 5 mergansers, including no more than 1 hooded merganser.

Geese

Season Dates: Open September 1, close November 28, 1999.

Daily Bag Limit: 10 geese.

Coots and Common Moorhens (Gallinule)

Season Dates: Open September 11, close November 23, 1999.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails

Season Dates: Open September 1, close November 28, 1999.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate. The possession limit is 25.

Common Snipe and Woodcock

Season Dates: Open September 1, close November 28, 1999.

Daily Bag Limit: 8 snipe and 3 woodcock.

General Conditions:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(d) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

All seasons in Michigan, 1836 Treaty Zone:

Ducks

Season Dates: Open September 20, 1999, close January 20, 2000.

Daily Bag Limit: 10 ducks, which may include no more than 1 pintail, 1 canvasback, 2 black ducks, 1 hooded merganser, 2 wood ducks, 2 redheads, and 5 mallards (only 2 of which may be hens).

Canada Geese

Season Dates: Open September 1, close November 30, 1999, and open January 1, 2000, close February 8, 2000.

Daily Bag Limit: 5 geese.

Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1, close November 14, 1999.

Daily Bag Limit: 5 rails, 5 snipe, and 5 woodcock.

General Conditions: A valid Grand Traverse Band Tribal license is required for all persons 12 years and older and must be in possession before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(e) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Ducks

Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

Michigan 1836 and 1842 Treaty Zones:

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 pintails, and 1 canvasback.

Mergansers

Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 5 mergansers.

Michigan 1836 and 1842 Treaty Zones:

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 5 mergansers, including no more than 1 hooded merganser.

Geese

All Ceded Areas:

Season Dates: Begin September 1 and end December 1, 1999.

Daily Bag Limit: 10 geese.

Other Migratory Birds: All Ceded Areas.

Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

Sora and Virginia Rails

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 25 sora and Virginia rails singly, or in the aggregate.

Common Snipe

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 8 common snipe.

Woodcock

Season Dates: Begin September 7 and end December 1, 1999.

Daily Bag Limit: 5 woodcock.

General Conditions

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR Part 20 as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State laws. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

5. Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan and Minnesota will comply with tribal codes that contain provisions that parallel applicable State laws concerning duck blinds and/or decoys.

(f) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members Only)

Ducks

Season Dates: Open September 15, 1999, close January 31, 2000.

Daily Bag and Possession Limits: 7 ducks, including no more than 1 pintail, 2 hen mallards, 4 scaup, and 1 canvasback.

Geese

Season Dates: Open September 1, 1999, close January 31, 2000.

Daily Bag and Possession Limits: 4 geese, including 4 dark geese but not more than 3 light geese. The possession limit is twice the daily bag limit.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

(g) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

Ducks

Season Dates: Open September 25, close November 28, 1999.

Daily Bag Limits: 10 ducks.

Geese

Season Dates: Open September 25, close November 28, 1999.

Daily Bag Limits: 10 geese.

General: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

(h) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers)

Band-tailed Pigeons

Season Dates: Open September 1, close September 30, 1999.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, close September 30, 1999.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal and non-tribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(i) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members)

Ducks

Season Dates: Open September 18, close November 19, 1999.

Daily Bag and Possession Limits: 6 ducks, including no more than 5 mallards (only 1 of which may be a hen), 5 wood ducks, 1 canvasback, 1 redhead, 2 pintails, and 1 hooded merganser. Possession limit is twice the daily bag limit.

Geese and Brant

Season Dates: Open September 1, close November 19, open November 29, close December 31, 1999.

Daily Bag and Limits: 5 brant, 3 Canada geese, and 5 snow geese. Geese must be tagged after harvest with tribal tags. The tribe will reissue tags upon registration of the daily bag limit. A season quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 11, close November 19, 1999.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

General Conditions: Tribal members and non-tribal members hunting on the Oneida Indian Reservation or on lands under the jurisdiction of the Oneida Nation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20. Tribal hunters are exempt from the requirement to purchase a Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp) and the plugging of shotgun to limit capacity to 3 shells.

(j) Point No Point Treaty Tribes, Kingston, Washington (Tribal Hunters)

Ducks

Season Dates: Open September 15, 1999, close January 15, 2000.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 hen mallards, 2 pintails, 1 canvasback and 2 redheads. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 1999, close January 15, 2000.

Daily Bag and Possession Limits: 4 geese, and may include no more than 3 light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 15, 1999, close January 15, 2000.

Daily Bag and Possession Limits: 2 brant. Possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 15, 1999, close January 15, 2000.

Daily Bag Limits: 25 coots.

Mourning Doves

Season Dates: Open September 1, close September 30, 1999.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 15, close January 15, 2000.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must obtain a tribal hunting permit from the respective tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office.

(k) Seminole Tribe of Florida, Big Cypress Seminole Reservation, Clewiston, Florida (Tribal Members and Non-tribal Hunters)

Mourning Dove

Season Dates: September 18, 1999, through January 20, 2000.

Daily Bag Limit: 15 doves.

General Conditions: Hunting is on Saturdays only. All other Federal regulations contained in 50 CFR part 20 apply.

(l) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members)

Ducks

Season Dates: Open September 15, 1999, close January 15, 2000.

Daily Bag and Possession Limits: 5 ducks, including no more than 1 canvasback. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 1999, close January 15, 2000.

Daily Bag and Possession Limits: 4 geese, and may include no more than 2 snow geese and 1 dusky Canada goose. The season on Aleutian and Cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 15, close December 31, 1999.

Daily Bag and Possession Limits: 2 and 4 brant, respectively.

Coots

Season Dates: Open September 15, 1999, close January 15, 2000.

Daily Bag Limits: 25 coots.

Snipe

Season Dates: Open September 15, 1999, and close January 15, 2000.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-tailed Pigeons

Season Dates: Open September 15, close December 1, 1999.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the tribe's Natural Resources Department and must have the permit, along with the member's treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington.

(m) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members)

Ducks/Coot

Season Dates: Open September 15, 1999, and close February 1, 2000.

Daily Bag and Possession Limits: 6 and 12 ducks, respectively; except that bag and possession limits are restricted for blue-winged teal, canvasback, harlequin, pintail, and wood duck to those established for the Pacific Flyway by final Federal frameworks, to be announced.

Geese

Season Dates: Open September 15, 1999, and close February 1, 2000.

Daily Bag and Possession Limits: 6 and 12 geese, respectively; except that the bag limits for brant and cackling and dusky Canada geese are those established for the Pacific Flyway in accordance with final Federal frameworks, to be announced. The tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

General Conditions: All waterfowl hunters, members and non-members, must obtain and possess while hunting a valid hunting permit from the Tulalip tribes. Also, non-tribal members sixteen years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a validated Federal Migratory Bird Hunting and Conservation Stamp and a validated State of Washington Migratory Waterfowl Stamp. All Tulalip tribal members must have in their possession while hunting, or accompanying another, their valid tribal identification card. All hunters are required to adhere to a number of other special regulations enforced by the tribes and available at the tribal office.

(n) White Earth Band of Chippewa, White Earth, Minnesota (Tribal Members Only)

Ducks and Mergansers

Season Dates: Open September 18, close November 30, 1999.

Daily Bag Limit for Ducks: 7 ducks, including no more than 2 mallards and

1 canvasback through September 24 and no more than 2 hen mallards and 2 canvasbacks thereafter.

Daily Bag Limit for Mergansers: 5 mergansers, including no more than 2 hooded mergansers.

Geese

Season Dates: Open September 1, close November 30, 1999.

Daily Bag Limit: 5 geese.

Coots

Season Dates: Open September 18, close November 30, 1999.

Daily Bag Limit: 20 coots.

Sora and Virginia Rails

Season Dates: Open September 11, close December 1, 1999.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate. The possession limit is 25.

Common Snipe and Woodcock

Season Dates: Open September 11, close December 1, 1999.

Daily Bag Limit: 10 snipe and 10 woodcock.

Mourning Dove

Season Dates: Open September 11, close December 1, 1999.

Daily Bag Limit: 25 doves.

General Conditions: Shooting hours are one-half hour before sunrise to one-half hour after sunset. Non-toxic shot is required.

(o) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Non-tribal Hunters)

Band-tailed Pigeons

Season Dates: Open September 1, close September 12, 1999.

Daily Bag and Possession Limits: 3 and 6 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, close September 12, 1999.

Daily Bag and Possession Limits: 8 and 16 doves, respectively.

General Conditions: All non-tribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all non-tribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and non-tribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking.

Dated: August 24, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–22383 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 64, No. 167
Monday, August 30, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 98–120–1]

Baggage Inspection for Domestic Flights From Puerto Rico and the U.S. Virgin Islands

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The Animal and Plant Health Inspection Service is soliciting public comment on changes we are considering making to regulations requiring inspections of airline passenger baggage on domestic flights leaving Puerto Rico and the U.S. Virgin Islands. Currently, air passengers must offer their carry-on and check-in baggage for inspection prior to boarding any domestic flight from Puerto Rico or the U.S. Virgin Islands to other parts of the United States, except Guam. Baggage is inspected to ensure that it is free of unauthorized fruits, vegetables, or other material that could harbor plant pests. We are considering changing this practice by concentrating inspections on flights that stop or end in parts of the United States where the plant pests could become established and reducing inspection of baggage on other flights.

We will hold two public hearings to discuss the regulatory changes we are considering in this advance notice of proposed rulemaking.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by October 29, 1999. We also will consider comments made at two public hearings scheduled to be held in San Juan, PR, on October 5, 1999, and in Sacramento, CA, on October 7, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–120–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3CO3, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–120–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

The public hearing in San Juan, PR, will be held at the Biblioteca Carnegie/Carnegie Library, Departamento de Educación/Department of Education, Avenue Ponce de Leon #7, San Juan, PR. The public hearing in Sacramento, CA, will be held at the Red Lion Inn-Sacramento, Comstock II Room, 1401 Arden Way, Sacramento, CA.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Smith, Senior Operations Officer, Safeguarding and Pest Management, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8295; fax: (301) 734–8584; or e-mail: Jim.F.Smith@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables from Puerto Rico or the Virgin Islands'' (7 CFR 318.58 through 318.58–16, referred to below as the regulations) are designed to prevent the dissemination of plant pests, including diseases, from Puerto Rico or the U.S. Virgin Islands into other parts of the United States.

Currently, the regulations in § 318.58–10 require all air passengers to offer their carry-on and check-in baggage and other personal effects for inspection prior to boarding flights from Puerto Rico or the U.S. Virgin Islands to other parts of the United States, except Guam.

The purpose of the inspections is to ensure that the baggage does not contain any agricultural articles that could carry plant pests, including diseases, to other parts of the United States. After inspecting and passing the baggage or personal effects, inspectors apply a United States Department of Agriculture (USDA) stamp, inspection sticker, or other identification to indicate that the baggage has been inspected and passed as required. The regulations prohibit airlines from accepting check-in baggage that has not been tagged.

New global trade patterns have resulted in increased agricultural imports into Puerto Rico and the U.S. Virgin Islands. More imports have increased the need for inspection of agricultural cargo, smuggling interdiction, and new pest monitoring activities. However, our current practice of requiring all air passengers on all flights from Puerto Rico and the U.S. Virgin Islands to other parts of the United States to offer their baggage for inspection prevents us from reallocating resources to other inspection and plant pest prevention activities. Current baggage inspection requirements also have created long lines and frustrated air passengers. As a result, we have reviewed our procedures to see if any changes might be appropriate.

As part of this review, we analyzed pest interception records from predeparture baggage inspections in San Juan, PR, during fiscal years 1994 through 1996. This analysis was conducted to determine whether the intercepted pests posed a risk to mainland United States agriculture generally or whether the risk was significant only if the pests were introduced into the southern United States. The analysis evaluated 36 pests and determined that intercepted plant pests in baggage from Puerto Rico pose a limited threat to agriculture in the northern United States. Cooler temperatures north of 38° latitude, especially from October 1 through April 30, effectively prevent the permanent establishment of tropical or subtropical plant pests and diseases in the northern United States. The analysis, titled ''Hazard Identification Analysis; Evaluation of San Juan Predeparture Interceptions in Baggage FY 1994–96,'' is available for public review on the Internet at http://www.usda.gov/ppq/ss/cobra/hazardsanjuan.html. You may also request a copy from the person listed under **FOR FURTHER INFORMATION CONTACT**.

The hazard identification analysis suggests that even if passenger baggage from Puerto Rico contained unauthorized fruits, vegetables, or other plant material and was carried into the northern United States, any plant pest in the baggage would present an insignificant risk. These conclusions are also applicable to passenger baggage from the U.S. Virgin Islands due to current practices that allow for the unrestricted movement of fruits, vegetables, or other plant material between Puerto Rico and the U.S. Virgin Islands. As a result, we are considering reducing baggage inspections on flights from Puerto Rico or the U.S. Virgin Islands that stop or end in the northern United States without a stop in the southern continental United States or Hawaii. However, because the climate on the west coast of the United States also could support populations of some pests of concern, we are considering ending mandatory inspection of baggage only for flights that will stop or end in parts of the continental United States east of 117° longitude and north of 38° latitude without a stop in either Hawaii or parts of the continental United States west of 117° longitude and south of 38° latitude. Roughly, the 38° latitude runs south of Washington and Baltimore on the east coast, south of Kansas City and Denver in the central United States, and south of Salt Lake City in the western United States. The 117° longitude corresponds to the State boundaries of Washington and Idaho in the northern United States and intersects the 38° latitude in south-central Nevada. This means that all carry-on and check-in baggage on flights from Puerto Rico and the U.S. Virgin Islands to California, Hawaii, Oregon, Washington, and the southern continental United States would continue to be inspected and tagged prior to departure. The inspection and tagging procedures for baggage on these flights are necessary to ensure that the baggage does not contain agricultural commodities that could carry plant pests from Puerto Rico or the U.S. Virgin Islands to other parts of the United States where the pests could become established.

For flights that do not stop in Hawaii or parts of the continental United States south of 38° latitude or west of 117° longitude, passengers would be required to offer baggage for inspection as directed by the local port director. The local port director could indicate whether passengers on a particular flight needed to offer baggage for inspection by posting signs in the airport departure terminal. The port director would use a random sampling method or risk-based criteria to select specific flights for inspection. The risk-based criteria would include: Seasonal conditions in the area where the flight would stop (e.g. if a flight would stop in an area where summer weather and available host material could support a local, temporary infestation); detection of pests not considered in the hazard identification analysis (e.g. outbreaks of new pests or diseases of plants or animals in Puerto Rico, the U.S. Virgin Islands, or neighboring islands); and monitoring data that indicates that air passengers may board connecting flights for continental United States destinations south of 38° latitude, west of 117° longitude, or Hawaii. This change in procedures would provide local port directors with the discretion to redirect resources and focus inspection efforts on higher risk activities. However, passengers leaving Puerto Rico or the U.S. Virgin Islands for any domestic destination would continue to be informed about fruits and vegetables and other materials prohibited in baggage, and the periodic inspections of baggage on flights to locations east of 117° longitude and north of 38° latitude would deter passengers from carrying this material in their baggage.

If we adopted the changes just described, we would also need to change our current requirements for tagging check-in baggage. As noted earlier, the regulations prohibit airlines from accepting check-in baggage that has not been tagged as inspected. We would maintain this requirement only for check-in baggage on flights that would stop or end in Hawaii or a place in the continental United States south of 38° latitude or west of 117° longitude. Check-in baggage on other domestic flights would not always be inspected.

Comments are invited on these potential changes to our procedures for inspecting passenger baggage. In particular, we are soliciting comments on the following questions:

1. Does the hazard identification analysis of predeparture baggage from San Juan, PR, adequately address plant pest risk associated with passenger baggage from Puerto Rico?

2. Does the hazard identification analysis of predeparture baggage from San Juan, PR, adequately address plant pest risk associated with passenger baggage from the U.S. Virgin Islands?

3. Does passenger baggage from Puerto Rico or the U.S. Virgin Islands present a risk of carrying agricultural commodities that confer risks to agriculture other than plant pests risks (e.g. noxious weeds, animal pests or diseases)?

Public Hearings

In addition to accepting written comments, we will hold two public hearings to discuss the regulatory changes under consideration in this advance notice of proposed rulemaking. One public hearing will be held on October 5, 1999, at the Biblioteca Carnegie/Carnegie Library, Departamento de Educación/ Department of Education, Avenue Ponce de Leon #7, San Juan, PR. The second hearing will be held on October 7, 1999, at the Red Lion Inn-Sacramento, Comstock II Room, 1401 Arden Way, Sacramento, CA.

A representative of APHIS will preside at the public hearings. Any interested person may appear and be heard in person, by attorney, or by other representative. Persons who wish to speak at the public hearings will be asked to sign in, listing their names and organizations.

The public hearings will begin at 9 a.m. local time and are scheduled to end at 5 p.m. local time. However, the hearings may be terminated at any time after they begin if all persons desiring to speak have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. If the number of speakers at the hearing warrants, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 23rd day of August, 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–22447 Filed 8–27–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–157–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon (Beech) Model 400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to

certain Raytheon (Beech) Model 400A airplanes. This proposal would require replacement of certain bus bars connecting the battery and external power receptacle to the airframe ground with a new, improved bus bar. This proposal is prompted by reports of electrical arcing at the battery and external power receptacle of the airframe ground in the aft fuselage due to a deficiency in the bus bar and washer design. The actions specified by the proposed AD are intended to prevent overheating or arcing of the ground connection in the aft fuselage area, which could result in a fire hazard due to ignition of fuel fumes during an engine start sequence.

DATES: Comments must be received by October 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P. O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Philip E. Petty, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–157–AD''. The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports indicating that electrical arcing occurred at the battery and external power receptacle of the airframe ground in the aft fuselage on Raytheon (Beech) Model 400A airplanes. Further investigation revealed that the battery ground was installed with a bus bar and washer that, later analysis showed, were too small of a capacity with regard to the battery ground current. Additionally, the torque specification that is called out for the bolt holding the bus bar and washer is not adequate for electrical applications. Such conditions, if not corrected, could result in electrical arcing or overheating of the ground connection in the aft fuselage area, which could result in a fire hazard due to ignition of fuel fumes during an engine start sequence.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Aircraft Service Bulletin SB 24–3253, dated January, 1999, which describes procedures for replacing certain bus bars connecting the battery and external power receptacle to the airframe ground with a new, improved bus bar. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the action specified in the service bulletin described previously.

Cost Impact

There are approximately 122 airplanes of the affected design in the worldwide fleet. The FAA estimates that 110 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 11 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this proposed AD. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $72, 600, or $660 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ''**ADDRESSES.**''

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Aircraft Company (Formerly Beech): Docket No. 99–NM–157–AD.

Applicability: Model 400A airplanes, serial numbers RK–78, RK–87 through RK–207 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing or overheating of the ground connection in the aft fuselage area, which could result in a fire hazard due to ignition of fuel fumes during an engine start sequence, accomplish the following:

Replacement

(a) Within 50 flight hours after the effective date of this AD, replace the two bus bars, part number (P/N) 128–364239–17 and P/N 101–361146–1, with a new, improved bus bar, P/N 101–364046–231, in accordance with Raytheon Aircraft Service Bulletin SB 24–3253, dated January 1999.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane, a bus bar, P/N 128–364239–17 or P/N 101–361146–1.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22394 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–186–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes. This proposal would require a one-time general visual inspection to detect certain discrepancies in the wiring of the fuel quantity indicating system (FQIS) in the forward cargo compartment; and corrective actions, if necessary. This proposal is prompted by a report indicating that several discrepancies were found in the wiring of the FQIS due to maintenance or alteration practices. The actions specified by the proposed AD are intended to prevent excessive electrical energy from entering the fuel tanks through the FQIS wiring, which could result in a potential ignition source in the fuel tanks.

DATES: Comments must be received by October 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–186–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–186–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–186–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during an inspection of 12 randomly selected McDonnell Douglas DC–9 series airplanes, certain discrepancies were found in the wiring of the fuel quantity indicating system (FQIS) in the forward cargo compartment area due to maintenance or alteration practices. These discrepancies include missing, loosely installed, or incorrectly sized wiring run attachment clamps; FQIS wiring that is string-tied in direct contact with other airplane wiring; and non-FQIS wires routed with the FQIS segmented conduit. Such conditions, if not corrected, could permit the wires to chafe against each other, which could permit excessive electrical energy to enter the fuel tanks through the FQIS wiring. This condition could result in a potential ignition source in the fuel tanks.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–28–077, dated June 8, 1999, which describes procedures for a one-time visual inspection to detect discrepancies (i.e., missing, loosely installed, or incorrectly sized wiring run attachment clamps; FQIS wiring that is string-tied in direct contact with other airplane wiring; and non-FQIS wires routed with the FQIS segmented conduit) in the wiring of the FQIS, and repairing or rerouting the wires, if necessary. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below. The proposed AD also would require that operators report results of inspection findings to the FAA.

Differences Between Proposed Rule and Service Information

Operators should note that, although the service bulletin recommends accomplishing the visual inspection at the earliest practical heavy maintenance period (after the release of the service bulletin), the FAA has determined that such an interval would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (less than one hour). In light of all of these factors, the FAA finds an 18-month compliance time for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Additionally, operators should note that, although the service bulletin specifies that the inspection findings should be sent to the manufacturer, this proposal would require the inspection findings to be sent to the FAA.

Cost Impact

There are approximately 815 airplanes of the affected design in the worldwide fleet. The FAA estimates that 577 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $34,620, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–186–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes; as listed in McDonnell Douglas Service Bulletin DC9–28–077, dated June 8, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive electrical energy from entering the fuel tanks through the fuel quantity indicating system (FQIS) wiring, which could result in a potential ignition source in the fuel tanks, accomplish the following:

Inspection and Corrective Actions

(a) Within 18 months after the effective date of this AD, perform a one-time general visual inspection to detect discrepancies in the wiring of the FQIS in the area of the forward cargo compartment in accordance with McDonnell Douglas Service Bulletin DC9–28–077, dated June 8, 1999. If any discrepancy is detected, prior to further flight, perform the corrective actions specified in the service bulletin, except as provided in paragraph (b) of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Reporting Requirement

(b) Where the service bulletin specifies to submit a report of inspection findings to Boeing: Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712–4137; ATTN: Robert Baitoo; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 3: Accomplishment of the inspection, corrective action, and reporting in accordance with McDonnell Douglas All Operator Letter (AOL) 9–2584, dated February 19, 1999; and Interim DC–9 Forward Cargo Compartment FQIS Inspection and Information Procedure, Revision 1, dated February 11, 1999; is acceptable for compliance with the actions required by paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22393 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–199–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and 340B series airplanes. This proposal would require removal of certain main landing gear downlock and brake hydraulic swivel brackets and replacement with new, redesigned brackets. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the downlock or brake swivels. Brake swivel failure could cause the loss of inboard or outboard brakes. Downlock swivel failure could cause the loss of hydraulic fluid in the main hydraulic system, as well as the loss of nose wheel steering operation, extension and retraction capability of landing gear and flaps, and operation of the propeller brake (if installed).

DATES: Comments must be received by September 29, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–199–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–199–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–199–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and 340B series airplanes. The LFV advises that a misalignment of the downlock or brake hydraulic swivels in the main landing gear (MLG) dragbrace and MLG shock strut trunnions has, due to excessive loads during extension/retraction of landing gear, resulted in an abnormally high failure rate of the hydraulic swivels. Brake swivel failure could cause the loss of inboard or outboard brakes. Downlock swivel failure could cause the loss of hydraulic fluid in the main system, as well as the loss of nose wheel steering operation, extension and retraction of landing gear and flaps, and operation of the propeller brake (if installed).

Explanation of Relevant Service Information

Saab Aircraft AB has issued Service Bulletin 340–29–009, Revision 02, dated July 2, 1999, which describes procedures for removal of certain main landing gear downlock and brake swivel brackets and replacement with new, redesigned brackets. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD No. 1–145, dated July 2, 1999, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 200 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,375 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $299,000, or $1,495 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB Aircraft AB: Docket 99–NM–199–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers SF340A–004 through –159 inclusive, and Model SAAB 340B series airplanes, serial numbers SF340B–160 through –339 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) downlock or brake hydraulic swivels and consequent loss of certain hyraulic-powered operations, accomplish the following:

Bracket Replacement

(a) Within 12 months after the effective date of this AD, remove the MLG downlock and brake hydraulic swivel brackets and replace with new, improved parts, in accordance with Saab Service Bulletin 340–29–009, Revision 02, dated July 2, 1999.

Note 2: Accomplishment, prior to the effective date of this AD, of the bracket replacement in accordance with Saab Service Bulletin 340–29–009, dated August 20, 1992, or Revision 1, dated April 15, 1993, is considered acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators

shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–145, dated July 2, 1999.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22391 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–15–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 31, 31A, 35, 35A, and 60 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Learjet Model 31, 31A, 35, 35A, and 60 airplanes. This proposal would require a visual inspection of the spoiler actuators to determine the serial number of the spoiler actuators; and replacement of the spoiler actuators with new actuators, if necessary. This proposal is prompted by failure of a spoiler actuator piston rod during the first production flight of a Model 60 airplane due to an incomplete heat treatment process. The actions specified by the proposed AD are intended to prevent failure of the spoiler actuator, which could result in the spoiler panel floating and inducing an uncommanded roll of the airplane.

DATES: Comments must be received by October 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Shane Bertish, Aerospace Engineer, Systems and Equipment Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone (316) 946–4156; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–15–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of failure of the spoiler actuator piston rod on the first production flight of a Learjet Model 60 airplane. Investigation revealed that a group of actuator piston rods had undergone an incomplete heat treating process that failed to achieve the desired material properties. This condition, if not corrected, could result in the spoiler panel floating and inducing an uncommanded roll of the airplane.

The subject spoiler actuator piston rods on Learjet Model 31, 31A, 35, and 35A airplanes are identical to those on the affected Learjet Model 60 airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Learjet Service Bulletins SB 31–27–19, dated December 14, 1998 (for Model 31 and 31A airplanes); SB 35–27–36, dated December 14, 1998 (for Model 35 and 35A airplanes); and SB 60–27–21, dated December 14, 1998 (for Model 60 airplanes). These service bulletins describe procedures for a visual inspection of the spoiler actuators to determine the serial number of the spoiler actuators; and replacement of the spoiler actuators with new actuators, if necessary. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously.

Cost Impact

There are approximately 45 airplanes of the affected design in the worldwide fleet. The FAA estimates that 37 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the

proposed AD on U.S. operators is estimated to be $2,220, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Learjet, Inc.: Docket 99–NM–15–AD.

Applicability: Model 31 and 31A airplanes, serial numbers 31–033, 31–105, 31–114, 31–126, and 31–150 through 31–161 inclusive; Model 35 and 35A airplanes, serial numbers 35–065, 35–242, 35–300, 35–323, 35–447, 35–622, and 35–670; and Model 60 airplanes, serial numbers 60–029, 60–050, 60–120 through 60–139 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the spoiler actuator, which could result in the spoiler panel floating and inducing an uncommanded roll of the airplane, accomplish the following:

Inspection and Replacement

(a) Within 150 flight hours after the effective date of this AD, perform a visual inspection to determine the serial number of the spoiler actuators, in accordance with Learjet Service Bulletins SB 31–27–19, dated December 14, 1998 (for Model 31 and 31A airplanes); SB 35–27–36, dated December 14, 1998 (for Model 35 and 35A airplanes); or SB 60–27–21, dated December 14, 1998 (for Model 60 airplanes); as applicable.

(1) If the serial number is not listed in the applicable service bulletin, no further action is required by this AD.

(2) If the serial number is listed in the applicable service bulletin, prior to further flight, replace the spoiler actuators with new actuators in accordance with the Accomplishment Instructions of the applicable service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22396 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–90–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 and C–9 (military) series airplanes. This proposal would require modification of the electrical power center and modification and overhaul of certain alternating current power relays. This proposal is prompted by reports indicating that the alternating current (AC) cross-tie relay shorted out internally, which caused severe smoke and burn damage to the relay, aircraft wiring, and adjacent panels. The actions specified by the proposed AD are intended to prevent a short in the cross-tie relay, which may result in in-flight electrical fires.

DATES: Comments must be received by October 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind

Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–90–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the alternating current cross-tie relay shorted out internally on McDonnell Douglas Model DC–9 series airplanes, which caused severe smoke and burn damage to the relay, aircraft wiring, and adjacent panels. Investigation revealed that the electrical fire originated within the cross-tie relay of the power distribution system. The cause of this incident has been attributed to a phase-to-phase short within the relay. This condition, if not corrected, could result in in-flight electrical fires.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 24–57, Revision 1, dated March 12, 1980, as amended by Change Notification 24–57 R1 CN2, dated June 24, 1988, which describes procedures for modification of the electrical power center. The modification of the electrical power center involves installation of two terminal boards, two nameplates, fourteen clamps, six current limiters, a mount assembly, two zees near the alternating current cross tie relay, and three spare alternating current cross tie relay current limiters and nameplate.

The FAA also has reviewed Westinghouse Aerospace Service Bulletin 75–703, dated June 1977, which describes procedures for modification and overhaul of certain alternating current power relays. The modification of certain alternating current power relays involves removal of part number 914F567–3 and installation of a –4 configuration.

The FAA also has reviewed McDonnell Douglas DC–9 Service Bulletin DC9–24–156, dated March 31, 1995, which describes procedures for replacement of the relays, P/N 914F567–3 or –4, with improved relays, P/N 9008D09.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

There are approximately 924 McDonnell Douglas DC–9 and C–9 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 392 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane (for Group I, 316 airplanes), and 3 work hours per airplane (for Group II, 76 airplanes), to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $490 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $287,560, or $910 per airplane (for Group I airplanes), and $50,920, or $670 per airplane (for Group II airplanes), per modification.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–90–AD.

Applicability: Model DC–9 and C–9 (military) series airplanes, as listed in McDonnell Douglas DC–9 Service Bulletin 24–57, Revision 1, dated March 12, 1980; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short in the cross-tie relay, which may result in in-flight electrical fires, accomplish the following:

Modification

(a) Within 12 months after the effective date of this AD, modify the electrical power center in accordance with McDonnell Douglas DC–9 Service Bulletin 24–57, Revision 1, dated March 12, 1980, as amended by Change Notification 24–57 R1 CN2, dated June 24, 1988, and accomplish the requirements specified in paragraph (a)(1) or (a)(2) of this AD.

(1) Modify the Westinghouse alternating current power relays, part number (P/N) 914F567–3 (i.e., cross-tie relays, generator relays, auxiliary power relays, and external power relays), to a –4 configuration, in accordance with Westinghouse Aerospace Service Bulletin 75–703, dated June 1977.

(2) Replace the Westinghouse alternating current power relays, P/N 914F567–3 or –4 with improved relays, P/N 9008D09, in accordance with McDonnell Douglas DC–9 Service Bulletin DC9–24–156, dated March 31, 1995.

Overhaul

(b) Overhaul the Westinghouse alternating current power relays, in accordance with Westinghouse service bulletin 75–703, dated June 1977, at times specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes equipped with Westinghouse relay, P/N 914F567–4, within 7,000 flight hours after accomplishing the modification required by paragraph (a) of this AD, overhaul the relay and repeat the overhaul at intervals not to exceed 7,000 flight hours.

(2) For airplanes equipped with Westinghouse relay, P/N 9008D09, within 12,000 flight hours after accomplishing the modification required by paragraph (a) of this AD, overhaul the relay and repeat the overhaul at intervals not to exceed 12,000 flight hours.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22395 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Use of Electronic Signatures by Customers, Participants and Clients of Registrants

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: As part of its ongoing efforts to facilitate the use of electronic technology and media in the futures industry, the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to adopt new rules allowing the use of electronic signatures in lieu of handwritten signatures for certain purposes under the Commission's regulations.[1] The Commission seeks comment on these rules and on issues relating generally to the use of electronic media for communications necessary to establish an account for trading commodity interests.

DATES: Comments must be received on or before October 29, 1999.

ADDRESSES: Comments should be mailed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; transmitted by facsimile to (202) 418–5521; or transmitted electronically to (secretary@cftc.gov). Reference should be made to ''Internet Account-Opening Process.''

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Christopher W. Cummings, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Notwithstanding the rapid pace at which business transactions of all kinds are being converted from paper-based to electronic formats, the opening of accounts to trade investment products in the commodity futures and option markets continues to involve exchange of paperwork between the broker and the customer. Strictly speaking, there is nothing in the Commodity Exchange Act (the ''Act'')[2] and the Commission's regulations issued thereunder that prevents a futures commission merchant (''FCM'') or introducing broker (''IB'') from opening electronically a customer account. There are ancillary rules, however, that effectively require the parties to exchange paper, such as the requirement that the FCM or IB obtain a signed acknowledgment that the customer has received the required risk disclosure statement,[3] or the requirement that an agreement to arbitrate disputes be entered into by a separate signature from that which executes the account agreement.[4] In the current session of Congress, several bills have been introduced to authorize the use of electronic signatures.[5] In addition, the National Conference of Commissioners on Uniform State Laws has prepared a ''Uniform Electronic Transactions Act'' (''UETA'') with the goal that it will be adopted by the States, giving legal certainty to

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1 *et seq.* (1999).

[2] 7 U.S.C. 1 *et seq.* (1994).

[3] *See* Rule 1.55(a)(1).

[4] *See* Rule 180.3(b)(6).

[5] *See* Senate Bills 761 (''Millennium Digital Commerce Act'') and 921 (''Electronic Securities Transactions Act'') and House Resolutions 1572 (''Digital Signature Act of 1999''), 1685 (''Internet Growth and Development Act of 1999'') and 1714 (''Electronic Signatures in Global and National Commerce Act'').

electronic commerce, particularly from the perspective of contract law.

Over the past several years, the Commission has modified or made exception to rule provisions that were adopted originally with paper-based transactions in mind in order to permit registrants to comply with those provisions in the context of electronic commerce. For example, as a result of such actions, the Commission now permits commodity pool operators (''CPOs'') and commodity trading advisors (''CTAs'') who deliver their prescribed Disclosure Documents by electronic means to obtain the required acknowledgment of receipt by electronic means that use a unique identifier to confirm the identity of the recipient, including such means as a personal identification number, or ''PIN.'' [6] The Commission has accepted the use of PINs in other contexts as well, such as in the attestation of financial reports that FCMs are required to file with self-regulatory organizations.[7]

Recently, the Division was asked to interpret Commission rules to permit an FCM to accept, in lieu of a prospective customer's manually signed, paper acknowledgment that he received and understood the risk disclosure statement specified in Rule 1.55, an electronic mail message to that effect on which the customer has typed his name. The Commission believes that customers of FCMs and IBs, as well as commodity pool participants and clients of CTAs, should be permitted to use electronic signatures in those instances where Commission regulations require the customer's (or participant's or client's) manual signature. In furtherance of this belief, the Commission is proposing Rule 1.4, ''Use of electronic signatures.'' [8]

B. Current Regulatory Requirements Affecting the Account-Opening Process

The process by which an FCM or IB actually establishes a customer account to trade commodity interests primarily is governed by state contract law. Neither the Act, the Commission's regulations nor the rules adopted by commodity industry self-regulatory organizations directly specify the steps to be taken to establish an account or the manner in which those steps are to be taken, although certain provisions of the Commission's regulations affect matters that are pendant to the account opening process. The following discussion highlights the CFTC rule provisions that may be implicated regarding customer authorizations and endorsements necessary for opening and maintaining a commodity interest trading account.

Rules 1.36 and 1.37

Rule 1.37(a) requires FCMs and IBs to keep permanent records, for each commodity futures or option account, of the customer's true name, address and principal occupation or business, as well as the name of any person guaranteeing the account or exercising any trading control with respect to the account. Rule 1.36 requires an FCM who receives property other than cash to margin or secure futures or commodity option transactions to keep a record of all such property and the name and address of the customer (as well as information regarding the segregation and ultimate disposition of the property).

Rules 1.55(a), (b), (c) and (f), and Rule 30.6

Rule 1.55(a) provides that prior to opening a commodity futures account an FCM or IB must: (1) furnish the customer with a written disclosure statement containing language specified in rule 1.55 (b) or (c); and (2) obtain the customer's signed and dated acknowledgement that he has received and understands the disclosure statement. Rule 30.6 extends a similar requirement to FCMs or IBs seeking to open foreign futures trading accounts for customers. Rule 1.55(f) provides that the FCM or IB may open a commodity interest account without furnishing the customer with the disclosure statements required by Rules 1.55(a), 30.6(a), 33.7(a) and 190.10(c) if the customer is among a specified category of sophisticated customers.[9]

Rule 33.7

Where an FCM or IB seeks to open a commodity option account for a customer, Rule 33.7 imposes requirements similar to those imposed by Rule 1.55 for commodity futures accounts. As with Rule 1.55, the FCM or IB must obtain a signed and dated acknowledgement that the required disclosure statement was received and understood by the customer. As is true for Rule 1.55(a), Rule 30.6 and Rule 190.10(c), this requirement does not apply where the customer is one of the types of sophisticated customers identified in rule 1.55(f).

Rule 190.10(c)

Rule 190.10(c) requires a commodity broker (other than a clearing organization), before accepting property other than cash to margin or secure a commodity contract, to furnish to the customer the bankruptcy risk disclosure statement specified in Rule 190.10(c)(2). As is true of Rule 1.55(a), Rule 30.6 and Rule 33.7, this requirement does not apply where the customer is one of the types of sophisticated customers identified in Rule 1.55(f).

Rule 190.06

Rule 190.06(d) requires that a commodity broker must provide an opportunity for each customer to specify when undertaking the customer's first hedging contract whether, in the event of the broker's bankruptcy, the customer prefers that open commodity contracts held in a hedging account be liquidated by the trustee in bankruptcy without seeking instructions from the customer.

Rule 1.55(d)

Rule 1.55(d) provides that an FCM or IB may obtain the acknowledgments required by rules 1.55, 33.7 and 190.06 by having the customer sign once, provided that the customer has acknowledged on the document he signs, by check or other indication, next to a description of each required disclosure statement (or election) that the customer has received and understood the disclosure statement (or made the election).

Rule 180.3

Rule 180.3 regulates conditions under which FCMs and IBs [10] may enter agreements with customers requiring that disputes be submitted to a settlement procedure, such as binding arbitration. Signing the agreement to use the specified settlement procedure must not be made a condition for the customer to utilize the services offered by the registrant. The rule also provides that if the agreement is contained as a clause or group of clauses in a broader agreement (*e.g.*, an FCM's customer agreement), the customer must

[6] *See* Rules 4.21(b) and 4.31(b), and 62 FR 39104, 39110 (July 22, 1997).

[7] Rule 1.10(d)(4). *See* 62 FR 10441 (March 7, 1997).

[8] As is discussed more fully below, the Commission also is proposing to define in new Rule 1.3(tt) the term ''electronic signature.''

[9] A customer is considered sophisticated for purposes of Rule 1.55(f) if it is: a bank or trust company; a savings association or credit union; an insurance company; an SEC-registered investment company or a foreign investment company with total assets in excess of $5 million; a pool operated by a registered (or foreign registered) or exempt CPO; a corporation or other entity with total assets in excess of $10 million or a net worth of $1 million; an employee benefit plan subject to ERISA (or foreign person performing similar functions and subject to foreign regulation) with assets in excess of $5 million; a registered broker-dealer; a registered FCM, floor broker or floor trader; or a natural person with total assets exceeding $10 million.

[10] Rule 180.3 also applies to registered floor brokers, CPOs and CTAs and their respective associated persons (''APs'').

separately endorse the clause or clauses containing the prescribed language regarding available dispute resolution fora and other cautionary material specified in rule 180.3.

Rule 166.2

Rule 166.2 requires that before an FCM, an IB or one of their APs effects a transaction in a customer's commodity interest account the customer (or the person designated by the customer to control the account) must specifically authorize the transaction *or* the customer must have authorized the FCM, IB or AP in writing to effect transactions in the account *without* specific authorization. Under the rule, any such authorization to effect transactions without specific further authorization must be expressly documented.

Several other rule provisions may, but do not necessarily, affect the account opening process:

Rule 1.65

Rule 1.65 applies to bulk transfers of customer accounts to another FCM or IB under circumstances other than at the request of the customer (an event that generally occurs subsequent to the opening of an account). The transferor FCM or IB must first obtain the customer's specific consent to the transfer. If the customer agreement contains a valid consent by the customer to prospective transfers of the account, the customer must nevertheless be provided with written notice of the transfer and must be given a reasonable opportunity to object to the transfer. The transferee FCM or IB must provide the risk disclosure statements required by rules 1.55, 33.7 and 190.10(c) unless: (1) The FCM or IB has clear written evidence that the customer has received and acknowledged the required disclosure statements; (2) the FCM or IB has clear written evidence that at the time the account was opened the customer was one of the sophisticated customers identified in rule 1.55(f); or (3) the transferor IB and the transferee IB are both guaranteed by the same FCM, and that FCM maintains the relevant acknowledgments required by Rules 1.55(a)(1)(ii) and 33.7(a)(1)(ii) and can establish compliance with Rule 190.10(c).

Rule 155.3

Rule 155.3(b)(2) prohibits an FCM or any of its affiliated persons from knowingly taking the other side of any order of another person revealed to the FCM or affiliated person by reason of their relationship to such person except with the other person's prior consent and in accordance with Commission-approved contract market rules.

Rule 1.20(a)

An FCM may not remove funds from a customer's segregated account and transfer those funds to another non-segregated account (such as a securities account) without a separate writing clearly evidencing the customer's authorization for the removal of those funds. The Commission has consistently declined to permit FCMs to include in the customer account agreement the requisite authorization to transfer funds from a customer's segregated account to another account of that customer carried by the FCM.[11]

II. Proposed New Rules

A. Rule 1.3(tt)

Rule 1.3 contains definitions of various terms used in the Act and the Commission's regulations. The Commission is proposing to add a new paragraph (tt) to the rule, which would define the term ''electronic signature'' as ''an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent of signing the record.'' The proposed definition is taken from the Uniform Electronic Transactions Act (''UETA'') approved and recommended for enactment in all the States by the National Conference of Commissioners of Uniform State Laws during that Conference's July 23–30, 1999 annual meeting.[12]

The wording of the proposed definition is intended to be broad enough to encompass electronic signatures created under a variety of current and future technologies, while requiring that the person employing an electronic signature does so with the intent to accomplish the signing of a particular electronic document or record. The definition also expressly provides that the ''sound, signal or process'' that will constitute the electronic signature be attached to or logically associated with an electronic record. As the drafters of the UETA noted:

A key aspect of this definition lies in the necessity that the electronic signature be linked or logically associated with the electronic record. For example, in the paper world, it is assumed that the symbol adopted by a party is attached to or located somewhere in the same paper that is intended to be authenticated. These tangible manifestations do not exist in the electronic environment, and accordingly, this definition expressly provides that the symbol must in some way be linked to or connected with, the electronic record being signed.[13]

Thus, where a futures customer is required to sign or adopt a particular phrase or statement (*e.g.*, a specific disclosure statement or portion thereof), the electronic signature must be linked or associated in a logical way with that phrase or statement.

B. Rule 1.4

Proposed rule 1.4(a) would permit the customer of an FCM or IB, a pool participant, or a client of a CTA to use an electronic signature *in lieu* of a written signature in any situation in which a provision of the Act or Commission regulations requires that person's signature. The broad permission to use electronic signatures would be subject to compliance with applicable Federal law and any standards regarding electronic signatures that the Commission may later adopt and guidance that Commission staff may provide.[14] It would also be subject to the futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor utilizing reasonable safeguards regarding the use of electronic signatures (including, at a minimum, measures to verify that the electronic signature belongs to the person using it, procedures to prevent alteration of an electronically-signed record, and procedures to detect changes or errors in an electronic signature). The Commission continues to believe that it generally is unwise to attempt to impose specific technological mandates or specific system design criteria on registrants, and that requiring instead the use of reasonable safeguards,

[11] *See Protection of Commodity Customers; Risk Disclosure by Futures Commission Merchants and Introducing Brokers to Customers; Bankruptcy Disclosure.* 63 FR 17495 (April 5, 1993) at 17499 n.18 and Staff Letters referenced there.

[12] The UETA definition is a broad one and is likely to be generally consistent with state and Federal laws adopted in the future.

[13] National Conference of Commissioners on Uniform State Laws *Uniform Electronic Transactions Act*, Draft prepared for the July 23–30, 1999 meeting (the ''Annual Meeting Draft'') at page 15. The Annual Meeting Draft is available online at the following URL: *http://www.law.upenn.edu/library/ulc/uecicta/etaam99.htm* The text of the UETA as approved is available online at the following URL: *http://www.law.upenn.edu/bll/ulc/fnact99/1990s/ueta.htm*.

[14] Although the Commission presently is not proposing to adopt specific standards regarding electronic signatures, it is possible that legislation pending in Congress may require Federal agencies to adopt such standards. For example, House Resolution 1572 would direct the National Institute of Standards and Technology to establish minimum technical criteria for the use by Federal agencies of electronic certification and management systems and to participate in a national policy panel intended to develop a national digital signature infrastructure based on uniform standards.

to be identified and implemented by the registrant itself, is the better approach.[15]

As is clear from the rule, it is not the Commission's intention that registrants (particularly small businesses) be required to implement electronic signature technology. Rather, if a registrant elects generally to accept electronically signed documents, proposed Rule 1.4 eliminates any uncertainty under the Act or Commission rules or regulations regarding the validity of the signatures.

Until such time as the Congress and State legislatures enact definitive legislation, there will be some question as to the sufficiency of electronic signatures in various contexts, and persons desiring to use them should know that this question exists and consequently that they should use electronic signatures with care. In particular, although the proposed rules will make clear that electronic signatures provided pursuant to the rules will comply with Commission regulations, the validity of such signatures under state contract law will vary depending on the relevant jurisdiction (*i.e.*, these proposed rules do not purport to preempt state law). In light of the foregoing, an FCM, IB, CPO or CTA who elects to receive, handle and store documents or records that have been signed by means of an electronic signature would be required by proposed Rule 1.4(b) to disclose to the customer, participant or client that although an electronic signature is sufficient for purposes of the Act and Commission regulations, it may be insufficient for purposes of other Federal or State laws or regulations (such as common law of contracts). For their own protection and the protection of their customers, registrants obviously should take reasonable care to determine whether an electronic signature intended to consummate a binding contract will be valid in a particular jurisdiction.

It should be noted that proposed Rule 1.4 would not relieve a registrant from any other applicable requirement under the Act or the Commission's rules—*e.g.*, applicable requirements to maintain records of certain signed documents (whether signed with pen and ink or with an electronic signature) in a manner consistent with Commission Rule 1.31.[16] Similarly, proposed Rule 1.4 would not relieve a registrant from requirements regarding the scope or type of customer information required to be kept—*e.g.*, Rule 1.37's requirement that FCMs and IBs keep permanent records, for each commodity futures or option account, of the customer's true name, address and principal occupation or business, as well as the name of any person guaranteeing the account or exercising any trading control with respect to the account. Lastly, registrants should be cognizant of their obligations, among other things, to report material inadequacies in their accounting and internal controls in accordance with Rule 1.16(e) and their duties diligently to supervise the handling of all commodity interest accounts they carry, operate, advise or introduce in accordance with Rule 166.3 when they determine the manner in which they will accept electronic signatures and the procedures and safeguards that they establish and use in connection with electronic signatures.

III. Issues on Which the Commission Requests Comment

General

As noted previously, for the past several years the Commission has been engaged in a process of reviewing its regulatory scheme and modernizing and streamlining its regulations to adapt to developments in the marketplace (including developments in technology and screen-based trading). As part of this process, the Commission believes that allowing for the use of electronic signatures will reduce paperwork and promote efficient access to futures markets. These proposed rules have been structured to be consistent with any future action by Congress or various states in this area. Should the Commission issue rules in this area now? Should the Commission defer rulemaking on electronic signatures pending possible legislation by Congress?

Security

As indicated above, Commission rules require that an FCM or IB obtain information (such as name, address and occupation) and signed acknowledgments (such as an acknowledgment of receipt of the Risk Disclosure Statement) from a new customer. Wholly-electronic communications such as interactive transactions over the Internet lend themselves to anonymous dealings and permit persons to adopt assumed identities. Is opening a commodity interest trading account entirely by electronic means inherently less conducive to establishing that a customer is who he or she claims to be than current practice involving exchange of paper documents and/or face-to-face dealings? What safeguards, if any, are appropriate to counteract any loss of security that may result from elimination of such vestiges of non-electronic commerce as manual signatures on acknowledgments, exchange of paper documents and face-to-face transactions? How and to what extent might encryption, personal identification numbers, callbacks or other security measures be employed to safeguard the integrity of information provided to or received from customers of FCMs and IBs, pool participants or clients of CTAs?

Much has been written on the development of so-called digital signatures and other electronic identification procedures. But each such method depends upon unambiguous establishment at the outset of the identity of the person who will use the identification procedure. If a digital signature or a personal identification number is assigned to a person who is using a false identity in the first place, the purpose of the process has been defeated. Would digital signatures or other electronic identification procedures be any less safe than is the case in the current ''paper world?'' Is the language of the proposed rules contained in this release adequate for purposes of permitting FCMs, IBs, CPOs and CTAs to accept electronic signatures from their customers or clients? Are any additional safeguards warranted?

Customer Protection

Under current practice, a customer who wants to trade commodity interests electronically must generally download and print out an account agreement and perhaps other documents, to be signed and returned before trading can commence. Does this built-in delay operate as a beneficial safeguard against high-pressure sales tactics or ill-considered entry into potentially risky markets? If a customer is able to log on to his computer, sign up electronically for a commodity interest trading account and immediately begin trading, does that make the customer more

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[15] Among the potential security procedures for electronic signatures identified in the UETA are ''the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgement procedures.'' *See* UETA Section 2(14).

[16] Regardless of the form that an electronic signature takes, where a registrant is required by Commission regulations to retain a signed record in accordance with Rule 1.31, the registrant must be able to make the record available (as a signed record) to Commission representatives at any time during the retention period specified in Rule 1.31. Under Rule 1.31, as recently amended (64 FR 28735 (May 27, 1999)) persons who store required records electronically must provide facilities for immediate production or projection of those records for examination by representatives of the Commission or the Department of Justice upon request.

susceptible to unscrupulous and deceptive sales tactics? Would there be a benefit to customers if the Commission imposed a specific waiting period (*e.g.*, twenty-four hours) before trading can commence in an electronically-opened account? Would a customer's ability to begin trading almost immediately upon electronically opening an account subject the FCM to new risks (*e.g.*, would it be more difficult or impossible for the FCM to run credit checks that may currently be part of the account opening process)?

Contract law issues

The Commission is aware that in spite of the fact that under Federal securities laws and regulations securities broker-dealers may be able to open and trade accounts electronically, broker-dealers have generally continued to require some exchange of signed paper documents in connection with opening trading accounts, largely because of the existing variations in state contract laws. Agreements to submit disputes to arbitration, for example, must be executed in such a way as to survive a court challenge, and to date, most broker-dealers have been reluctant to accept an electronic signature for this purpose. The Commission has elected in these proposed rules to allow electronic signatures, but to require disclosure to customers to the effect that an electronically executed arbitration agreement may be unenforceable in certain states. Are there any other legal issues besides questions of contract enforceability or issues concerning provisions of the Act or the Commission's regulations that may be raised if registrants open customer accounts electronically?

Coordination with self-regulatory organizations

To the extent that self-regulatory organizations (''SROs'') overseen by the Commission (including the National Futures Association and the designated contract markets) propose or adopt rules regarding electronic signatures, conflicts may arise between the proposed rule and such SRO rules. Should the Commission expressly provide that SRO rules must be consistent with the proposed rule? Is this matter better handled in the context of the process pursuant to which the Commission reviews and approves SRO rule changes?

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[17] The Commission has previously determined that FCMs and CPOs are not small entities for the purpose of the RFA.[18] With respect to CTAs and IBs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs and IBs would be considered to be small entities and, if so, the economic impact on them of any rule.[19] In this regard the Commission notes that the regulations being proposed herein do not change the obligations of CTAs and IBs under the Act and Commission regulations, but permit CTAs and IBs to comply with certain existing obligations by using electronic means as an acceptable alternative to paper-based compliance. The Chair, on behalf of the Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.* (Supp. I 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA.

The Office of Management and Budget (OMB) approved the collection of information associated with this proposed rule (3038–0022, Rules Pertaining to Contract Markets and Their Members) on October 24, 1998. While the proposed rule discussed herein has no burden, the group of rules (3038–0022) of which it is a part has the following burden:

Average Burden Hours Per Response: 3,609.89.

Number of Respondents: 15,893.

Frequency of Response: Annually and On Occasion.

Copies of the OMB-approved information collection submission are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581 (202) 418–5116.

[17] 47 FR 18618–18621 (April 30, 1982).

[18] 47 FR 18619–18620.

[19] 47 FR 18618–18620.

List of Subjects in 17 CFR Part 1

Signatures, Commodity futures, Commodity brokers.

Accordingly, 17 CFR part 1 is proposed to be amended as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, 24.

2. Section 1.3 is proposed to be amended by adding new paragraph (tt) to read as follows:

§ 1.3 Definitions.

* * * * *

(tt) *Electronic signature* means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent of signing the record.

3. Section 1.4 is proposed to be added to read as follows:

§ 1.4 Use of electronic signatures.

(a) For purposes of complying with any provision in the Commodity Exchange Act or the rules or regulations in this Chapter I that requires a document to be signed by a customer of a futures commission merchant or introducing broker, a pool participant or a client of a commodity trading advisor, an electronic signature executed by the customer, participant or client will be sufficient, if the futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor elects generally to accept electronic signatures; *Provided, however,* That:

(i) The electronic signature must comply with applicable Federal laws and such standards as the Commission may adopt and such guidance as the Commission's staff may provide; and

(ii) The futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor must adopt and utilize reasonable safeguards regarding the use of electronic signatures, including at a minimum:

(A) Safeguards employed for the purpose of verifying that an electronic signature is that of the person purporting to use it;

(B) Safeguards employed to prevent alteration of the electronic record with which the electronic signature is associated, after such record has been electronically signed; and

(C) Safeguards employed for detecting changes or errors in a person's electronic signature.

(b) Any futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor who elects to accept documents that are executed by means of an electronic signature must clearly disclose to the customer, participant or client using an electronic signature that although an electronic signature is sufficient for purposes of the Commodity Exchange Act and the rules or regulations of this chapter, it may not be sufficient for purposes of other Federal or State laws or regulations.

Issued in Washington D.C. on August 24, 1999.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22461 Filed 8–27–99; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD07–99–058]

RIN 2115–AA98

Special Anchorage Area; St. Lucie River, Stuart, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special anchorage area on the St. Lucie River in Stuart, FL. This area is currently used as a temporary and long-term area for vessels to anchor. The establishment of this anchorage will improve the safety of vessels anchoring within and transiting the highly trafficked area, while also lessening the detrimental impact on the ecosystem by providing a designated safer area for vessels to anchor.

DATES: Comments must be received on or before October 29, 1999.

ADDRESSES: Comments may be mailed to Commander, Aids to Navigation Branch, Seventh Coast Guard District, 909 S.E. First Avenue, Miami, FL 33131–3050, or may be delivered to above address between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: LT Kerstin Rhinehart, Seventh Coast Guard District, Aids to Navigation Branch, at (305) 536–4566.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD07–99–058] and the specific section of this proposal to which each comment applies and give the reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a notice in the **Federal Register**.

Background and Purpose

This proposed rule is in response to a request made by the City of Stuart to establish a city managed mooring field on the St. Lucie River. The intended effect of the regulations is to reduce the risk of vessel collisions by providing notice to mariners of the establishment of a special anchorage area, in which vessels not more than 65 feet in length shall not be required to carry or exhibit anchor lights as required by the Navigation Rules. The establishment of the special anchorage has been in coordination with and endorsed by the Florida Department of Environmental Protection (DEP). The DEP determined that properly managed mooring and anchorage fields located in appropriate areas, will encourage vessels to utilize them for safety purposes, and as a side benefit the ecosystem will incur lessened or negligible detrimental impacts.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic effect upon a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities as use of the anchorage area is voluntary. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard, in association with the Florida Department of Environmental Protection, is considering the environmental impact of this proposed rule, and has determined that this rule may be categorically excluded from further environmental documentation under Figure 2–1, paragraph 34(f) of Commandant Instruction M16475.1C. An Environmental Analysis Checklist and Categorical Exclusion Determination will be completed during the comment period.

List of Subjects in 33 CFR Part 110

Special anchorage areas.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of Title 33, Code of Federal Regulations, as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.73c is added to read as follows:

§ 110.73c Okeechobee Waterway, St. Lucie River, Stuart, FL.

The following is a special anchorage area: Beginning on the Okeechobee Intracoastal Waterway between mile marker 7 and 8 on the St. Lucie River, bounded by a line beginning at 27°12′06.583″N, 80°15′33.447″W; thence to 27°12′07.811″N, 80°15′38.861″W; thence to 27°12′04.584″N, 80°15′41.437″W; thence to 27°11′49.005″N, 80°15′44.796″W; thence to 27°11′47.881″N, 80°15′38.271″W; thence to the point of beginning. All coordinates reference Datum NAD:83.

Note: This area is principally used by recreational vessels. The mooring of vessels in this area is administered by the local Harbormaster, City of Stuart, Florida.

Dated: August 11, 1999.

G.W. Sutton,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 99–22436 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1604; MM Docket No. 99–86; RM–9505]

Radio Broadcasting Services; Fruitland, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; dismissal of.

SUMMARY: The Commission denies the request of Mountain West Broadcasting to allot Channel 300A to Fruitland, NM, as it is not a community for allotment purposes. *See* 64 FR 14421, March 25, 1999. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–86, adopted August 11, 1999, and released August 13, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22401 Filed 8–27–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[RSPA–97–2094]

RIN 2137—AC54

Pipeline Safety: Underwater Abandoned Pipeline Facilities

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would require the last operator of an abandoned pipeline, offshore and, or, crossing under, over or through navigable waterways to submit a report of the abandonment to the Secretary of Transportation. This notice responds to a Congressional mandate. The results of this proposal would be a central depository of information about underwater abandoned pipelines.

DATES: Comments on the subject of this NPRM must be received on or before October 29, 1999.

ADDRESSES: Comments should identify the docket number of this NPRM, RSPA–97–2094, and be mailed to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street SW, Washington, DC 20590–0001. You should submit the original and one copy. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard. The Dockets facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. In addition, the public may also submit or review comments by accessing the Docket Management System's home page at http://dms.dot.gov. An electronic copy of any document may be downloaded from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick by telephone at 202–366–5523, by fax at 202–366–4566, by mail at U.S. Department of Transportation, RSPA, DPS–10, 400 Seventh Street, SW, Washington, DC, 20590, or via e-mail to le.herrick@rspa.dot.gov regarding this notice of proposed rulemaking. You may contact the Dockets Unit, 202–366–5046, for copies of this notice or material that is referenced herein.

SUPPLEMENTARY INFORMATION:

A. Background

Underwater pipelines are being abandoned at an increasing rate as older facilities reach the end of their use. This trend is expected to continue. Presently, there is no one location where these records of abandonment are maintained. In 1992, Congress directed the Secretary of Transportation to require the last operator of an offshore pipeline facility or a pipeline facility crossing under, over, or through navigable waters to report the abandonment of that facility to the Secretary (49 U.S.C. 60108(c)(6)(B)). This report must contain reasonably available information about the facility and specify whether the facility has been abandoned properly according to applicable Federal and State requirements. Once these reports are filed by the operators they will be accessible to appropriate Federal and State agencies.

We propose to fulfil this Congressional mandate by requiring operators who have abandoned underwater pipeline facilities to report information to the Secretary through the Research and Special Programs Administration's (RSPA) Associate Administrator for Pipeline Safety. The report would include all reasonably available information related to the facility, including information in the possession of a third party. The report would provide a consolidated information source for Federal agencies and State governments to assist in determining if current abandonment requirements are meeting public safety goals. The report would be due upon abandonment of the facility or, for those facilities abandoned prior to the

effective date of this rule, the report would be due one year from the effective date of this rule. The lead time prior to the implementation of this reporting requirement would provide the last operator with sufficient time to incorporate the reporting requirement into their operations.

B. Report Requirements

All reasonably available information should be included. For example:

Location: The geographic location of the endpoints and description of the line as used in the right of way permit and by Geographical Information System (GIS) coordinates.

Size: The outside diameter and approximate length of the pipeline.

Date of abandonment: The date the operator satisfied all the applicable State and Federal requirements for the abandonment.

Method of abandonment: A statement describing the method of abandonment.

Certification: A written statement by the last operator certifying that the facility has been abandoned according to all applicable State and Federal requirements.

Service use: The year or years the facility was placed in service, and the primary product carried by the pipeline prior to abandonment.

We expect that most operators will have the required information readily available. However we are particularly interested in receiving comments from the operators concerning the availability of the information. We are also interested in comments making recommendations on the criteria we should use to determine the scope of the provision for the operator to supply all information that is ''reasonably available''.

We believe that most operators affected by this rule currently employ practices for abandoning pipelines which include some measure of reporting the abandonment. The requirements we are proposing for this report are expected to be sufficiently performance based to allow the operators to be able to forward information to us with a minimal of additional costs.

In implementing these provisions, we would require that the report be sent by letter mail, e-mail, or fax to: Information Officer, Department of Transportation, Research and Special Programs Administration, Office of Pipeline Safety, 400 Seventh Street, SW, Washington, DC 20590, E-mail: roger.little@rspa.dot.gov, FAX: (202) 366–4566.

Regulatory Analysis and Notices

A. E.O. 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The proposal is not considered significant under the policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979).

Those operators who abandoned pipelines after 1980 should have the required information to compile the abandonment report readily available because the operators have been retaining these records for other purposes. For these operators, it should take 15 to 30 minutes to compile and submit the abandonment report. For operators who have abandoned pipelines before 1980, where the data may not be readily available, some research may be required to compile the abandonment report. However, we believe that pre 1980 abandonments represent a small number of the total abandonments. Because a majority of the abandonments have occurred after 1980, we conclude that this regulation will have a minimal impact on the pipeline industry. For more details see the ''Paperwork Reduction Act'' section of this preamble.

B. Federalism Assessment

The proposed rulemaking action would not have substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), we have determined that this notice does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

C. Executive Order 13084—Indian Tribal Governments

We believe that revised regulations from this NPRM would have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Therefore, the funding and consultation requirements of this Executive Order would not apply. Nevertheless, this NPRM specifically requests comments from affected persons, including Indian tribal governments, as to its potential impact.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each agency to review regulations and assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. Based on its preliminary regulatory evaluation prepared in support of this proposal, RSPA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Although operators who have abandoned pipelines before 1980 may be required to perform approximately 8 hours of work to compile the data necessary to produce an abandoned pipeline report, we estimate that there are under 300 operators effected by such abandonments. Because the majority of reports required by this proposed regulation would require only 15–30 minutes of operator time per abandonment, the impact of this regulation will be minimal. The building of pipelines that cross navigable waterways is a very capital intensive operation that requires access to significant sums of working capital. It is unlikely that many small operators have such pipelines. Therefore, I certify, pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this proposal will not, if implemented, have a significant economic impact on a substantial number of small entities. However, we are interested in receiving comments from any small business operators who believe otherwise. This certification is subject to modification as a result of a review of the comments received in response to this proposal.

E. Unfunded Mandates

This proposed rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of over $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the Congressional mandate.

F. Paperwork Reduction Act

This notice of proposed rulemaking contains information collection requirements in 49 CFR 192.727 and 49 CFR 195.59 for the last operator of an abandoned underwater pipeline facility. The notice proposes the submission of a report to the Department of

Transportation regarding the abandonment of underwater pipeline facilities. This requirement will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. Comments are specifically requested on the additional burden this requirement would likely impose upon the operators.

Comments on the proposed information collection requirement should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attn: Desk Officer for Department of Transportation, Research and Special Programs Administration.

We request that comments sent to OMB also be sent to our rulemaking docket.

A copy of the Paperwork Analysis has been put in the docket, and is available for review and copying along with the preamble of this proposal. To summarize the conclusions of the paperwork analysis:

	Number of reports	Time to compile and send report per segment (hours)	Total hours
Pipelines abandoned before 1980	300	8	2,400
Pipelines abandoned 1980–1992	300	1	300
Pipelines abandoned after 1992	2000 (or 400 per year)	0.25	500
Total			3,200

The total cost of this proposal for all pipelines abandoned prior to 1992, assuming that the person compiling the report is paid $40 per hour, is $128,000. The reason for the reduction in the time to compile the report for more recently abandoned pipelines is that the information necessary to compile the report should be readily available because operators are generally compiling and maintaining this information as part of their normal operations. Data on pipelines abandoned after 1992 should be in a form that can be easily copied and sent to the Federal Government. Abandoned pipeline data for the period 1980–1992 might require some more preparation before sending to the Federal Government and therefore is estimated to take one hour of operator time . We believe that the information for the reports for the period prior to 1980, is ''reasonably available,'' in most cases, if found within eight (8) hours of diligent searching.

After 1992 operators were routinely maintaining reports of abandonment. We estimate that each year after 1992 will cost the industry $4,000 (400 reports × $40 × 1/4hour = $4,000.)

G. Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize ''double zero'' not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This NPRM does not propose business process changes or require modifications to computer systems. Because this NPRM apparently does not affect organizations' ability to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the proposed requirements in this NPRM.

H. National Environmental Policy Act

We have analyzed this action for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have determined that this action would not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact are in the docket.

I. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 192

Hazardous liquid, Natural gas, Pipeline safety, Pipelines, Reporting and recordkeeping requirements.

49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend parts 192 and 195 of title 49 of the Code of Federal Regulations as follows:

PART 192—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

Subpart A—General

1. The authority citation for part 192 would continue to read as follows:

Authority: 49 U.S.C. 5103, 6102, 6104, 6108, 6109, 6110, 6113, and 6118; 49 CFR 1.53.

2. Section 192.3 would be amended by adding a new definition in alphabetical order to read as follows:

§ 192.3 Definitions.

Abandoned means permanently removed from service.

* * * * *

3. Section 192.727 would be amended to add paragraph (g) to read as follows:

§ 192.727 Abandonment or inactivation of facilities.

* * * * *

(g) For each abandoned offshore pipeline facility or each abandoned onshore pipeline facility that crosses over, under or through a navigable waterway, the last operator of that facility must file a report by mail, fax or e-mail to the Information Officer, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590; fax (202) 366–4566; e-mail, roger.little@rspa.dot.gov. The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a certification that

the facility has been abandoned according to all applicable laws.

PART 195—[AMENDED]

1. The authority citation for Part 195 would continue to read as follows:

Authority: 49 U.S.C. 5103, 6102, 6104, 6108, 6109, 6118; 49 CFR 1.53.

2. Section 195.3 would be amended by adding a new definition in alphabetical order to read as follows:

§ 195.2 Definitions.

Abandoned means permanently removed from service.

* * * * *

3. Section 195.59 would be added to read as follows:

§ 195.59 Abandoned underwater facilities.

For each abandoned offshore pipeline facility or each abandoned onshore pipeline facility that is crossing over, under, or through a navigable waterway, the last operator of that facility must file a report by mail, fax or e-mail to the Information Officer, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590; fax (202) 366–4566; e-mail, roger.little@rspa.dot.gov. The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must include the location, size, date, method of abandonment, and a certification that the facility has been abandoned according to all applicable laws.

4. Section 195.402(c) (10) would be revised to read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(c) * * *

(1) * * *

(10) Abandoning pipeline facilities, including safe disconnection from an operating pipeline system, purging of combustibles, and sealing abandoned facilities left in place to minimize safety and environmental hazards. For each abandoned offshore pipeline facility or each abandoned onshore pipeline facility that is crossing over, under, or through a navigable waterway, the last operator of that facility must file a report as specified in § 195.59 of this part.

* * * * *

Issued in Washington, DC on August 23, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–22330 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 64, No. 167

Monday, August 30, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–049–1]

Horse Protection Act; List of Designated Qualified Persons

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice advises the general public and the horse industry of the organizations that have a Designated Qualified Person program currently certified by the United States Department of Agriculture. This notice also lists the currently licensed Designated Qualified Persons in each organization.

FOR FURTHER INFORMATION CONTACT: Dr. Dick Watkins, Assistant Deputy Administrator, Animal Care, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1234; (301) 734–7712; or e-mail: Richard.H.Watkins@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The practice known as ''soring'' is a painful procedure used to accentuate a horse's gait in order to enhance its performance in the show ring. In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821–1831), referred to below as the Act, to eliminate the practice of soring by prohibiting the showing or selling of sored horses. Exercising its rulemaking authority under the Act, the Animal and Plant Health Inspection Service (APHIS) enforces regulations in 9 CFR part 11, referred to below as the regulations, that prohibit devices and methods that might sore horses. In 1979, in response to an amendment to the Act, we established regulations under which show management must, to avoid liability for any sore horses that are shown, appoint individuals trained to conduct preshow inspections to detect or diagnose sored horses. These individuals, referred to as Designated Qualified Persons (DQP's), are trained and licensed under industry-sponsored DQP programs that we certify and monitor. The requirements for DQP programs and licensing of DQP's are set forth in § 11.7 of the regulations.

Section 11.7 also requires that we publish a current list of horse industry organizations that have certified DQP programs, and a list of licensed DQP's, in the **Federal Register** at least once each year. The list reads as follows:

Spotted Saddle Horse Breeders & Exhibitors Association, P.O. Box 1046, Shelbyville, TN 37162
Licensed DQP's: Joe ''Buck'' Beard, Earl M. ''Marty'' Coleman, Danny Ray Davis, Tommy Derryberry, James ''Tony'' Edwards, Steven L. Johnson, Mac McGee, Boyd Melton, E.W. Murray, Larry Keith Smith, Don Woodson

Kentucky Walking Horse Association, Route 6, Box 11, Manchester, KY 40962
Licensed DQP's: Les W. Acree, Lee Arnold, Jackie Brown, Ray Burton, Eddie Ray Davis, James Floyd, Buddy L. Glasscock, John L. Goldey, James M. Goode, Grover C. Hatton, Bobby W. Helton, J. Scott Helton, Leon Hester, Dave Jividen, Paul Lasure, Ricky McCammon, Alonzo Napier, Rick O'Neal, Curtis Pittman, Ted B. Poland, John Robinson, Donald Todd, Arnold ''Sarg'' Walker, Johnnie Zeller

Western International Walking Horse Association, 18525 SE 346, Auburn, WA 98092
Licensed DQP's: Larry Corbett, Don Douglas, Ross Fox, Dennis Izzi, Terry Jerke, Joe Nelson, Dave Swingley, Kim Swingley, Kelly Smith, Pat Thacker

Horse Protection Commision, Inc., P.O. Box 1330, Frazier Park, CA 93225
Licensed DQP's: M. Avila, D. Benefield, D. Collins, L. Connelly, J. Hampton, K. Hester, T. Hester, J. Kendig, S. Kolbusz, R. Lauer, A. Miller, L. Mitchell, P. Mitchell, D. Moore, M. Mullrul, C. Pitts, D. Rash, C. Shepherd, J. Singleton, P. Snodgrass, V. Stamper, K. Thompson

Heart of America Walking Horse Association, 1775 DeGraffenreid Place, Nixa, MO 65714
Licensed DPQ's: Bob Blackwell, Jackie Brown, Chad Campbell, Jennifer Campbell, Larry Carriger, Ronnie D. Cousler, William H. Cox, L. Forgey, Lawanda Foust, R. Dewey Foust, Robert Foust, Betty Grooms, Floyd Hampsmire, Jim Hill, Jim Hoffman, Philip Manker, Stephen Mullins, Wendell Pigg, Linda Scrivner, Sonny Scrivner, A. Scott Skopec, Steve Skopec, Charlie Smart, Robert H. Smith, William Stotler, Jerry Williams, John Williams

National Horse Show Commission, P.O. Box 167, Shelbyville, TN 37160
Licensed DQP's: Lonnie D. Adkins, Melanie Allen, Don Bell, Nolan Benton, Ray Cairnes, Ronnie Campbell, Harry Chaffin, John Cordell, Joe L. Cunningham, Sr., Jessie Davis, Jerry Eaton, William Edwards, Anthony Eubanks, Craig Evans, James Fields, Bob Flynn, Kathy Givens, Iry Gladney, Jimmy House, Ralph Lakes, Larry R. Landreth, Malcolm G. Luttrell, Earl Melton, Andy Messick, Lonnie Messick, Richard Messick, Cary C. Myers, Harlan Pennington, Dickey Reece, Ricky D. Rutledge, Vernon Shearer, Ronnie Slack, Virginia Stanley, Ricky L. Statham, J.H. Syrcle, Charles Thomas, Mark Thomas, Steven Thomas, Greg Thomason, Doug Watkins, Tommy Willet, John F. Wilson

Missouri Fox Trotting Horse Breed Association, Inc., P. O. Box 1027, Ava, MO 65608
Licensed DQP's: Julie Alford, Jack Arnold, Beverly Berry, Frank Bowman, Richard B. Carr, Everett Clamp, Kennith Cochran, Donnie Daugherty, Rob Eagleburger, Gail Freed, Pat Harris, Deb Heggerston, Mark Landers, Edward L. Lee, Geno Middleton, Jeanie Nichols, David Ogle, Mike Osborn, Gary Pierce, Traci Scott, Danny Sublett, Shawn Sublett, Ken Williams, Lee Yates

National Walking Horse Association, P. O. Box 28, Petersburg, TN 37144
Licensed DQP's: Pat Klabusich, Murral R. Johnson, Chris McKinney, Jeff Smith, Mike Stanley, Pamela Wisecup

Done in Washington, DC, this 23rd day of August, 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–22446 Filed 8–27–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Applications for FY 2000 National Research Initiative Competitive Grants Program

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of Availability of Program Description and Solicitation for Applications for Fiscal Year 2000 National Research Initiative Competitive Grants Program.

SUMMARY: Applications are invited for competitive grant awards in

agricultural, forest, and related environmental sciences under the National Research Initiative (NRI) Competitive Grants Program administered by the Competitive Research Grants and Awards Management Division, Cooperative State Research, Education, and Extension Service (CSREES), for fiscal year (FY) 2000.

FOR FURTHER INFORMATION CONTACT: USDA/CSREES/NRI, Stop 2241, 1400 Independence Ave., SW., Washington, DC 20250–2241. Phone: (202) 401–5022. E-mail: nricgp@reeusda.gov.

SUPPLEMENTARY INFORMATION:

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Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. These comments will be considered in the development of the next solicitation of applications for the program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105–185). Written comments should be submitted by first-class mail to: Office of Extramural Programs; Competitive Research Grants and Awards Management; USDA–CSREES; STOP 2299; 1400 Independence Avenue, SW.; Washington, DC 20250–2299, or via e-mail to: RFP-OEP@reeusda.gov.

In your comments, please include the name of the program and the fiscal year solicitation of applications to which you are responding. Comments are requested within six months from the issuance of the solicitation of applications. Comments received after that date will be considered to the extent practicable.

Authority and Applicable Regulations

The authority for this program is contained in 7 U.S.C. 450i(b). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the United States Department of Agriculture (USDA).

Regulations applicable to this program include the following: (a) The regulations governing the NRI, 7 CFR part 3411, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher-Education, Hospitals, and Other Non-Profit Organizations, 7 CFR part 3019; (c) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (d) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016; and (e) 7 U.S.C. 3103, which defines ''sustainable agriculture.''

Conflicts of Interest

For the purpose of determining conflicts of interest in accordance with 7 CFR part 3411.12, the academic and administrative autonomy of an institution shall be determined by reference to the February 1999 issue of the Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit Institutions, prepared by Quantum Research Corporation for the National Science Foundation. Copies may be obtained through the Internet at http://www.nsf.gov/sbe/srs/sfsucni/method98/codebook/codebook.htm.

Project Types and Eligibility Requirements

The project types for which proposals are solicited include:

I. Conventional Projects

(a) Standard Research Grants: Research will be supported that is fundamental or mission-linked, and that is conducted by individual investigators, co-investigators within the same discipline, or multidisciplinary teams. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, national laboratory, private organization, corporation, or individual may apply. Proposals submitted by non-United States organizations will not be considered for support.

(b) Conferences: Scientific meetings that bring together scientists to identify research needs, update information, or advance an area of research are recognized as integral parts of research efforts. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, national laboratory, private organization, corporation, or individual is an eligible applicant in this area. Proposals submitted by non-United States organizations will not be considered for support.

II. Agricultural Research Enhancement Awards

To contribute to the enhancement of research capabilities in the research program areas described herein, applications are solicited for Agricultural Research Enhancement Awards. Such applications may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, national laboratory, private organization, corporation, or individual; however, further eligibility requirements are defined in 7 CFR part 3411.3(d) and restated in the FY 2000 NRI Program Description. Applications submitted by non-United States organizations will not be considered for support. However, United States citizens applying as individuals for Postdoctoral Fellowships may perform all or part of the proposed work at a non-United States organization. Agricultural Research Enhancement Awards are available in the following categories:

(a) Postdoctoral Fellowships

(b) New Investigator Awards

(c) Strengthening Awards: Institutions in USDA EPSCoR entities are eligible for strengthening awards. For FY 2000, USDA EPSCoR states consist of the following:

Alaska
Arkansas
Connecticut
Delaware
Hawaii
Idaho
Kentucky
Maine
Mississippi
Montana
Nevada
New Hampshire
New Mexico
North Dakota
Rhode Island
South Carolina
South Dakota
Vermont
West Virginia
Wyoming

For FY 2000, other USDA–EPSCoR entities consist of the following:

American Samoa
District of Columbia
Guam

Micronesia
Northern Marianas
Puerto Rico
Virgin Islands

Investigators at small and mid-sized institutions (total enrollment of 15,000 or less) may also be eligible for Strengthening Awards. An institution in this instance is an organization that possesses a significant degree of autonomy. Significant degree of autonomy is defined by being independently accredited as determined by reference to the 1999 Higher Education Directory, published by Higher Education Publications, Inc., 6400 Arlington Boulevard, Suite 648, Falls Church, Virginia 22042. Phone: (703) 532–2305.

Institutions which are among the most successful universities and colleges for receiving Federal funds for science and engineering research, except those in USDA EPSCoR entities, are ineligible for strengthening awards. The top 100 institutions excluding those in USDA EPSCoR entities are as follows:

Baylor College of Medicine
Boston University
California Institute of Technology
Carnegie-Mellon University
Case Western Reserve University
Colorado State University
Columbia University
Cornell University
CUNY Mount Sinai School of Medicine
Duke University
Emory University
Florida State University
Georgia Institute of Technology
Harvard University
Indiana University
Iowa State University of Science and Technology
Johns Hopkins University
Massachusetts Institute of Technology
Medical College of Wisconsin
Michigan State University
New York University
North Carolina State University
Northwestern University
Ohio State University
Oregon Health Sciences University
Oregon State University
Pennsylvania State University
Princeton University
Purdue University
Rockefeller University
Rutgers, The State University of New Jersey
Scripps Research Institute
Stanford University
State University of New York at Stony Brook
State University of New York at Buffalo
Texas A&M University College Park
Thomas Jefferson University
Tufts University
Tulane University
University of Alabama Birmingham
University of Arizona
University of California Berkeley
University of California Davis
University of California Irvine
University of California Los Angeles
University of California San Diego
University of California San Francisco
University of California Santa Barbara
University of Chicago
University of Cincinnati
University of Colorado
University of Florida
University of Georgia
University of Illinois Urbana-Champaign
University of Illinois Chicago
University of Iowa
University of Kansas
University of Maryland Baltimore Prof Sch
University of Maryland College Park
University of Massachusetts Amherst
University of Massachusetts Medical School Worcester
University of Medicine and Dentistry of New Jersey
University of Miami
University of Michigan Ann Arbor
University of Minnesota Twin Cities
University of Missouri Columbia
University of North Carolina Chapel Hill
University of Pennsylvania
University of Pittsburgh
University of Rochester
University of Southern California
University of Texas at Austin
University of Texas Health Science Center Houston
University of Texas Health Sci. Center San Antonio
University of Texas MD Anderson Cancer Center
University of Texas Medical Branch Galveston
University of Texas SW Medical Center Dallas
University of Utah
University of Virginia
University of Washington
University of Wisconsin Madison
Vanderbilt University
Virginia Polytechnic Institute and State University
Virginia Commonwealth University
Wake Forest University
Washington University
Wayne State University
Woods Hole Oceanographic Institute
Yeshiva University, New York

See the FY 2000 NRI Program Description for complete details on programs and eligibility.

Funding Categories for FY 2000

CSREES is soliciting proposals, subject to the availability of funds, for support of high priority research of importance to agriculture, forestry, and related environmental sciences, in the following research categories (ANTICIPATED FY 2000 (FY00) funding and ACTUAL FY 1999 (FY99) funding, rounded to the $0.1M, follows in parentheses):

- Natural Resources and the Environment (FY00: $19.1M, FY99: $19.1M).
- Nutrition, Food Quality, and Health (FY00: $14.9M, FY99: $14.9M).
- Plant Systems (FY00: $38.2M, FY99: $38.2M).
- Animal Systems (FY00: $27.0M, FY99: $27.0M).
- Markets, Trade, and Policy (FY00: $4.3M, FY99: $4.3M).
- New Products and Processes (FY00: $7.6M, FY99: $7.6M).

Support for research opportunities listed below may be derived from one or more of the above funding categories based on the nature of the scientific topic to be supported.

Pursuant to 7 U.S.C. 450i(b)(10), no less than 10 percent (FY00: $11.1M, FY99: $11.1M) of the available funds listed above will be made available for Agricultural Research Enhancement Awards (excluding New Investigator Awards), and no more than 2 percent (FY00: $2.2M, FY99: $2.2M) of the available funds listed above will be made available for equipment grants. Further, no less than 30 percent (FY00: $33.4M, FY99: $33.4M) of the funds listed above shall be made available for grants for research to be conducted by multidisciplinary teams, and no less than 40 percent (FY00: $44.5M, FY99: $44.5M) of the funds listed above shall be made available for grants for mission-linked systems research.

CSREES is prohibited from paying indirect costs exceeding 19 per centum of the total Federal funds provided under each award on competitively awarded research grants (7 U.S.C. 3310).

Research Opportunities

The funds appropriated as listed above will be used to support research grants in the following areas:

NATURAL RESOURCES AND THE ENVIRONMENT
  Plant Responses to the Environment
  Ecosystem Science
  Soils and Soil Biology
  Watershed Processes and Water Resources
NUTRITION, FOOD SAFETY, AND HEALTH
  Improving Human Nutrition for Optimal Health
  Food Safety
  Epidemiological Approaches for Food Safety
ANIMALS
  Animal Reproductive Efficiency
  Animal Growth, Development, and Nutrient Utilization
  Animal Genome and Genetic Mechanisms
  Animal Health and Well-Being
BIOLOGY AND MANAGEMENT OF PESTS AND BENEFICIAL ORGANISMS.
  Entomology and Nematology
  Biologically Based Pest Management.
  Biology of Plant-Microbe Associations
  Biology of Weedy and Invasive Plants
PLANTS

Plant Genome
Plant Genetic Mechanisms
Plant Growth and Development
Agricultural Plant Biochemistry
MARKETS, TRADE, AND RURAL DEVELOPMENT
Markets and Trade
Rural Development
ENHANCING VALUE AND USE OF AGRICULTURAL AND FOREST PRODUCTS
Value-Added Products Research
Food Characterization/Process/Product Research
Non-Food Characterization/Process/Product Research
Improved Utilization of Wood and Wood Fiber
AGRICULTURAL SYSTEMS RESEARCH (integrated, multidisciplinary research on agricultural systems)

Application Materials

The FY 2000 NRI Program Description, which contains research topic descriptions, and the NRI Application Kit, which contains detailed instructions on how to apply and the requisite forms, are available through the NRI home page, www.reeusda.gov/nri. Paper copies of these application materials may be obtained by sending an e-mail with your name, complete mailing address (not e-mail address), phone number, and materials that you are requesting to psb@reeusda.gov. Materials will be mailed to you (not e-mailed) as quickly as possible. Alternatively, paper copies may be obtained by writing or calling the office indicated below. Proposal Services Unit, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Ave., SW, Washington, DC 20250–2245, Telephone: (202) 401–5048.

Materials Available on Internet

The following are among the materials available on the NRI home page (www.reeusda.gov/nri).

NRI Program Description

This document is available for the current fiscal year, and describes all of the NRI funding programs. To apply for a grant, it is also necessary to obtain the NRI Application Kit.

NRI Application Kit

This document contains guidelines for proposal preparation and the requisite forms.

NRI Abstracts of Funded Research

The abstracts available on this searchable database are nontechnical abstracts written by the principal investigator of each individual grant, starting with FY 1993. Each entry also includes the title, principal investigator(s), awardee institution, dollar amount, and proposal number for each grant. The first two digits of the proposal number indicate the fiscal year in which the proposal was submitted.

NRI Annual Report

The NRI Annual Reports starting with FY 1995 are available. These reports include descriptions of the program concept, the authorization, policy, inputs to establish research needs, program execution, and outcomes, including relevant statistics. Also included are examples of recent research funded by the NRI.

Electronic Subscription to NRI Documents

The NRI has set up a mailserver which will notify subscribers when publications such as its Program Description or Abstracts of Funded Research are available electronically on the World Wide Web. Subscribers will not receive the document itself, but instead will receive an e-mail containing an announcement regarding the document's availability on the NRI home page.

To subscribe:

Send an e-mail message to: majordomo@reeusda.gov

In the body of the message, include only the words: *subscribe nri-epubs*

To unsubscribe:

Send an e-mail message to: majordomo@reeusda.gov

In the body of the message, include only the words: *unsubscribe nri-epubs*

Please note that this is not a forum. Messages, other than those related to subscription, can not be posted to this address.

NRI Deadline Dates

The following fixed dates have been established for proposal submission deadlines within the NRI. To be considered for funding in any fiscal year, proposals must be transmitted by the date listed below (as indicated by postmark or date on courier bill of lading). When the deadline date falls on a weekend or Federal holiday, transmission must be made by the following business day.

Programs offered in any fiscal year depend on availability of funds and deadlines may be delayed due to unforeseen circumstances. Consult the pertinent NRI solicitation in the **Federal Register**, the NRI Program Description, or the NRI home page (www.reeusda.gov/nri) for up-to-date information.

Postmarked dates	Program codes	Program areas
November 15	22.1	Plant Responses to the Environment.
	23.0	Ecosystem Science.
	25.0	Soils and Soil Biology.
	26.0	Watershed Processes and Water Resources.
	31.0	Improving Human Nutrition for Optimal Health.
	51.9	Biology of Weedy and Invasive Plants.
	80.1	Research Career Enhancement Awards.
	80.2	Equipment Grants.
	80.3	Seed Grants.
December 15	52.1	Plant Genome.
	52.2	Plant Genetic Mechanisms.
	53.0	Plant Growth and Development.
	61.0	Markets and Trade.
	62.0	Rural Development.
	71.1	Food Characterization/Process/Product Research.
	71.2	Non-Food Characterization/Process/Product Research.
January 15	32.0	Food Safety.
	32.1	Epidemiological Approaches for Food Safety.

Postmarked dates	Program codes	Program areas
	41.0	Animal Reproductive Efficiency.
	44.0	Animal Health and Well-Being.
	51.2	Entomology and Nematology.
	51.7	Biologically Based Pest Management.
	51.8	Biology of Plant-Microbe Associations.
	73.0	Improved Utilization of Wood and Wood Fiber.
February 15	42.0	Animal Growth, Development, and Nutrient Utilization.
	43.0	Animal Genome and Genetic Mechanisms.
	54.3	Agricultural Plant Biochemistry.
	100.0	Agricultural Systems Research.

Please note: Starting in fiscal year 2001, the submission deadline for the Agricultural Systems Research (100.0) will be November 15.

Done at Washington, DC, this 19th day of August 1999.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 99–22381 Filed 8–27–99; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Food Safety Inspection Service

[Docket No. 99–042N]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold a public meeting on September 21–24, 1999, to review and discuss ongoing work on *Listeria monocytogenes (Lm)* and *Vibrio parahaemolyticus (V. parahaemolyticus)* risk assessments and to address the issue of bare-hand contact with ready-to-eat foods at retail.

DATES: The full committee will hold a public meeting on bare-hand contact of ready-to-eat foods at retail, on Tuesday and Wednesday, September 21–22, 1999, beginning at 8:00 a.m. On Wednesday afternoon, September 22, beginning at 1:30 p.m. there will be an update on performance criteria for fresh juice. The full committee will reconvene on Thursday and Friday, September 23–24, 1999, beginning at 8:00 a.m. to discuss *Lm* and *V. parahaemolyticus* risk assessments. Also, on Friday, September 24, 1999, beginning at 3:15 p.m., the full committee will review for adoption the Small Plant Hazard Analysis Guidelines.

ADDRESSES: The meeting will be held at the Washington Plaza Hotel, #10 Thomas Circle NW, at Massachusetts Avenue & 14th Street, Washington, DC 20005, telephone number (202) 842–1300.

FOR FURTHER INFORMATION CONTACT: Persons wishing to register for the meeting, should contact Ms. Mary Harris, (202) 501–7315, Fax (202) 501–7615, e-mail address: mary.harris@usda.gov or mailing address: Food Safety and Inspection Service, Department of Agriculture, Room 6904E—Franklin Court, 1400 Independence Avenue, SW, Washington, DC 20250–3700. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Harris, by September 10, 1999.

If you wish to make an oral presentation on any of the meeting topics you must contact Ms. Catherine M. DeRoever at (202) 205–4251, fax: (202) 205–4970, or e-mail address: *cderoeve@bangate.fda.gov* and submit (1) a brief written statement regarding the general nature of comments and (2) the name, address, and telephone number, of the person who will be giving the presentation. Because of the anticipated number of individuals who may wish to make a public statement, it is likely that the committee will limit the time allotted for the presentations. Reservations to make a public statement will be taken on a first come, first served basis. All requests to make a presentation must be received no later than 4:30 p.m., September 8, 1999. Any documents submitted become part of the Committee records.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF provides advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services, regarding the microbiological safety of foods. The Committee also provides advice to the Centers for Disease Control and Prevention and the Departments of Commerce and Defense. Dr. I. Kaye Wachsmuth, Deputy Administrator, Office of Public Health and Science, FSIS, is the Committee Chair.

During the full committee meeting on bare-hand contact with ready-to-eat foods at retail, the committee will discuss the many scientific issues having to do with food worker hand contact of ready-to-eat foods. They will evaluate the risk of transmitting bacterial, viral, and parasitic pathogens from food workers, via ready-to-eat foods, to consumers, and the effectiveness of interventions.

During the full committee meeting on *Lm*, the preliminary risk assessment that addresses the presence of *Lm* in specific food groups, the consumption of these foods by various subpopulations including their total intake and health response, will be reviewed. Comments will be requested on the methodology used, the interpretation of data, and any additional assessments that should be made. At the *V. parahaemolyticus* risk assessment session, an update on the information, data, and parameters, will be given along with a summation of the risk assessment findings to date. Again, comments will be requested on the methodology used, the interpretation of data, and any additional assessments that should be made.

The Meat and Poultry Subcommittee will submit the Small Plant Hazard Analysis Guidelines for adoption by the full committee.

Additional Public Notification

Pursuant to Departmental Regulation 4300–4, ''Civil Rights Impact Analysis,'' dated September 22, 1993, FSIS has considered the potential civil rights impact of this notice on minorities, women, and persons with disabilities. Therefore, to better ensure that these groups and others are made aware of this meeting, FSIS will announce it and provide copies of the **Federal Register** publication in the FSIS Constituent Update.

The Agency provides a weekly FSIS Constituent Update, which is communicated via fax to over 300

organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding Agency policies, procedures, regulations, **Federal Register** Notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, the Agency is able to provide information with a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Office of Congressional and Public Affairs, at (202) 720–5704.

Done at Washington, DC on: August 25, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–22430 Filed 8–27–99; 8:45 am]

BILLING CODE 3410–DM–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, D.C. on Monday, Tuesday, and Wednesday, September 13–15, 1999, at the times and location noted below.

DATES: The schedule of events is as follows:

Monday, September 13,1999

1:30 p.m.–5:00 p.m. Technical Programs Committee

Tuesday, September 14, 1999

9:00 a.m.–Noon and 1:30 p.m.–5:00 p.m. Committee of the Whole and Ad Hoc Committee on Section 508 Standards (Closed Meeting)

Wednesday, September 15, 1999

9:00 a.m.–9:30 a.m. Committee of the Whole Meeting—Play Areas Final Rule (Closed Meeting)

9:30 a.m.–10:30 a.m. Planning and Budget Committee

10:30 a.m.–Noon Executive Committee

1:30 p.m.–3:00 p.m. Board Meeting

ADDRESSES: The meetings will be held at the Ronald Reagan Building, Conference Center, 1300 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434, ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items.

- Executive Director's Report.
- Approval of the Minutes of the July 14, 1999, Board Meeting.
- Executive Committee Report—Ad Hoc Committee on Nominations Report and Committee Work Plan.
- Planning and Budget Committee Report—Fiscal Year 1999 Spending Plan and Fiscal Year 2001 Budget.
- Technical Programs Committee Report—Status Report on Fiscal Years 1998, 1999, and 2000 Projects.
- Committee of the Whole and Ad Hoc Committee Report—Section 508 NPRM.
- Committee of the Whole Report—Play Areas Final Rule.
- Regulatory Negotiation Committee Report—Outdoor Developed Areas.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 99–22464 Filed 8–27–99; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet September 14, 1999, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Open Session

1. Opening remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3. Update on pending regulatory revisions.
4. Update on policies under review.
5. Discussion of draft regulation concerning Exporter of Record.
6. Discussion on compliance and enforcement issues.
7. Discussion of encryption regulations.
8. Discussion of regulations regarding High Performance Computers.
9. Update on implementation of Wassenaar Arrangement.

Closed Session

10. Discussion of matters properly classified under Executive Order 12958, dealing with the US export control program and strategic criteria related thereto.

A limited number of seats will be available for the open session. Reservations are not required. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to the following address: Ms. Lee Ann Carpenter, BXA MS:3876, 15th St. and Pennsylvania Ave., NW, US Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 12, 1999, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meeting or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 52b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, US Department of Commerce, Washington, DC. For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: August 24, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–22458 Filed 8–27–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke four antidumping duty orders in part.

EFFECTIVE DATE: August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (1997), for administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on silicon metal from Brazil, certain pasta from Italy, canned pineapple from Thailand, and certain pasta from Turkey.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than July 31, 2000.

	Periods to be reviewed
Antidumping Duty Proceedings	
Brazil: Silicon Metal, A–351–806	7/1/98–6/30/99
Companhia Brasileira Carbuerto De Calcio	
Companhia Ferroligas Minas Gerais-Minasligas	
Eletrosilex S.A.	
Ligas de Aluminia S.A.	
Rima Industrial S.A.	
Canada: Oil Country Tubular Goods,* A–122–506	12/1/98–5/30/99
Atlas Tube Inc.	
*Inadvertently omitted from previous initiation notice. Also because we are conducting a new shipper review covering the period 6/1/98 through 11/30/98, this administrative review will only cover the period 12/1/98 through 5/30/99.	
Chile: Fresh Atlantic Salmon, A–337–803	7/28/98–6/30/99
Acuicultura de Aquas Australes	
Agromar Ltda.	
Aquachile S.A.	
Aguas Claras S.A.	
Aquasur Fisheries Ltda.	
Asesoria Acuicola S.A.	
Best Salmon	
C.M. Chiloe Ltda.	
Cenculmavique	
Centro de Cultivo de Moluscos	
Cerro Farellon Ltda.	
Chile S.A.	
Chisal S.A.	
Complejo Piscicola Coyhaique	
Cultivadora de Salmones Linao Ltda.	
Cultivos San Juan	
Cultivos Yardan S.A.	
Cultivos Marinos Chiloe Ltda.	
Fiordo Blanco S.A.	
Fisher Farms	
Fitz Roy	
G.M. Tornagaleones S.A.	
Hiutosal	
Huitosal Mares Australes Salmo Pac.	
I.P. Mar de Chiloe S.A.	
Intervec Seafood S.A.	
Manao Bay Fisheries	
Mardim Ltda.	
Mares Australes	
Ocean Horizons	
P. Antares S.A.	
P. Chiloe S.A.	
P. Friosur S.A.	
P. Los Fiordas	
P. Pacific Star	

	Periods to be reviewed
Pacific Mariculture	
Patagonia Fish Farming S.A.	
Patagonia Salmon Farming, S.A.	
Pes Quellon Ltda.	
Pesca Chile S.A.	
Pesquera Eicosal Ltda.	
Pesquera Mares Australes Ltda.	
Piscicultura Iculpe	
Piscicultura La Cascada	
Piscicultura Santa Margarita	
Prosmolt S.A.	
Salmonamerica	
Salmon Andes S.A.	
The Salmoamerica Group	
Salmones Americanos S.A.	
Cultivadora de Salmones Linao Ltda.	
Salmones Antarctica S.A.	
Salmones Caicaen S.A.	
Salmones Llanquihue	
Salmones Mainstream S.A.	
Salmones Multiexport Ltda.	
Salmones Pacifico Sur, S.A.	
Salmones Quellon	
Salmones Ranco Sur Ltda.	
Salmones Tecmar S.A.	
Salmones Unimarc S.A.	
Salmosan	
Seafine	
Trusal S.A.	
Ventisqueros S.A.	
Italy: Certain Pasta, A–475–818	7/1/98–6/30/99
Commercio-Rappresentanze-Export S.r.l.	
F.lli De Cecco di Filippo Fara S. Martino S.p.A.	
Industrie Alimentari Molisane S.r.l.	
La Molisana Industrie Alimentari S.p.A.	
Pastificio Antonio Pallante S.r.l.	
Pastifico F.LLI Pagani S.p.A.	
Pastificio Maltagliati S.p.A.	
P.A.M., S,r.l.—Prodotti Alimentari Meridionali.	
Rummo S.p.A. Pastificio e Molino	
Thailand: Canned Pineapple, A–549–813	7/1/98–6/30/99
Kuiburi Fruit Canning Company Limited	
Malee Sampran Factory Public Company, Ltd.	
The Prachuab Fruit Canning Company	
Siam Fruit Canning (1988) Co., Ltd.	
Siam Food Products Public Company Ltd.	
Thai Pineapple Canning Industry Corp., Ltd.	
The Thai Pineapple Public Co., Ltd.	
Tropical Food Industries Co., Ltd.	
Vita Food Factory (1989) Co. Ltd.	
The People's Republic of China: Persulfates,* A–570–847	7/1/98–6/30/99
Guangdong Petroleum Chemical Import & Export Trade Corp.	
Sinochem Jiangsu Wuxi Import & Export Corp.	
Shanghai Ai Jian Import & Export Corp.	
*If one of the above named companies does not qualify for a separate rate, all other exporters of persulfates from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
The People's Republic of China: Sebacic Acid,* A–570–825	7/1/98–6/30/99
Guangdong Chemicals Import & Export Corporation	
Sinochem International Chemicals Company	
Sinochem Jiangsu Import & Export Corporation	
Tianjin Chemicals Import & Export Corporation	
*If one of the above named companies does not qualify for a separate rate, all other exporters of sebacic acid from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
Turkey: Certain Pasta, A–489–805	7/1/98–6/30/99
Filiz Gida Sanayi ve Ticaret A.S.	
Pastavilla Makarnacilik Sanayi ve Ticaret A.S.	
The United Kingdom: Industrial Nitrocellulose, A–412–803	7/1/98–6/30/99
Imperial Chemical Industries PLC	
Countervailing Duty Proceedings	
Italy: Certain Pasta, C–475–819	1/1/98–12/31/99

	Periods to be reviewed
Delverde, SpA Tamma Industrie Alimentari, SrL	
Suspension Agreements	
The People's Republic of China: Honey, A–570–838.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: August 24, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Group II, AD/CVD Enforcement.

[FR Doc. 99–22463 Filed 8–27–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–811]

Certain Stainless Steel Wire Rods From France: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Rick Johnson, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3434 or (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Review

The products covered by this administrative review are certain stainless steel wire rods (SSWR), products which are hot-rolled or hot-rolled annealed, and/or pickled rounds, squares, octagons, hexagons, or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Amendment of Final Results

On August 28, 1998, the Department of Commerce (the Department) published the amended final results of the administrative review of the antidumping duty order on certain stainless steel wire rods from France (63 FR 45998). This review covered Imphy S.A., and Ugine-Savoie, two manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is January 1, 1996, through December 31, 1996.

On September 14, 1998, counsel for the petitioning companies, Al Tech Specialty Steel Corp., Armco Stainless & Alloy Products, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., United Steelworkers of America, and AFL–CIO/CLC (collectively ''petitioners'') filed an allegation of a clerical error in a timely fashion.

Petitioners allege that the Department failed to correct a ministerial error with respect to the calculation of home market credit expenses when the payment date was missing. Petitioners state that the Department's amended final program continues to result in an abnormally high imputed credit expenses that result in negative home market prices for certain sales. Petitioners state that they informed the Department of this clerical error in their July 8, 1998 clerical error letter. However, according to petitioners, in issuing its amended final results the Department did not provide a reason for not amending the program for this clerical error, but stated only that ''petitioners have failed to point to any specific programming language which is in error, and the mere allegation that certain calculated expenses are too high is insufficient for finding a ministerial error.'' *See Amended Final Results of Antidumping Duty Administrative Review, Certain Stainless Steel Wire Rods from France*; 63 FR 45999, (August 28, 1998). Petitioners acknowledge that they did not provide exact programming language nor locate the exact cause of the alleged clerical error at the time of their original clerical errors comments were filed, although petitioners did propose on June 8 that the Department rely on respondents' submitted information for credit expenses. Petitioners argue that ignoring a clerical error simple because they did not identify the programming error within the provided time frame is unfair and unlawful. Nevertheless, petitioners have now identify the error, and request that the Department correct this clerical error. Respondents did not comment on this issue.

After a review of petitioners' allegation, we agree with petitioners that a clerical error was made in the calculation of home market credit expense in the amended final results. We have corrected our calculation of home market credit expense when the

pay date is missing in our model match program. For the computer code we used to correct this ministerial error, please see the *Memorandum from Robert A. Bolling to Edward Yang* dated April 19, 1999 (''*Amended Final Calculation Memorandum*''), a public version of which is available in the Central Records Unit, Room B–099 of the Department of Commerce building, 14th Street and Constitution Ave, NW, Washington, DC.

Amended Final Results of Review

As a result of our review and the correction of the ministerial errors described above, we have determined that the following margin exists:

Manufacturer/Exporter	Time period	Margin (percent)
Imphy/Ugine-Savoie	1/1/96–12/31/96	7.19

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentages stated above. This Department will issue appraisement instructions directly to the Customs Service. The amended final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review. For duty assessment purposes, we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total value of subject merchandise entered during the POR for each importer.

Furthermore, the following deposit requirements will be effective, upon publication of this notice of amended final results of review for all shipments of certain stainless steel wire rods from France entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 24.51 percent for stainless steel wire rods, the all others rate established in the LTFV investigations. *See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Wire Rods from France*, (59 FR 4022, January 28, 1994).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–22462 Filed 8–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Newly Established Industry Functional Advisory Committee; Request for Nominations

AGENCY: International Trade Administration, Trade Development.

ACTION: Notice of Establishment of Industry Functional Advisory Committee on Electronic Commerce for Trade Policy Matters; Request for Nominations.

SUMMARY: The Secretary of Commerce and the United States Trade Representative have jointly established an Industry Functional Advisory Committee on Electronic Commerce for Trade Policy Matters pursuant to section 135 of the Trade Act of 1974, and seek nominations for appointment to the Committee. Nominees must be U.S. citizens, representing U.S. manufacturing and service firms that trade internationally or provide services in direct support of the international trading activities of other entities. Priority will be given to a balanced representation in terms of point of view represented by various sectors, product lines, firm sizes and geographic areas.

More detailed information is provided below and is also available on the International Trade Administration website at www.ita.doc.gov/icp. Inquiries may be directed to Tamara Underwood, Director, Industry Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue NW, Room 2015–B, Washington, DC 20230, phone 202/482–3268.

SUPPLEMENTARY INFORMATION: Pursuant to section 135 of the Trade Act of 1974 (19 U.S.C. 2155) and the Federal Advisory Committee Act (5 U.S.C. App), the Secretary of Commerce (the Secretary) and the United States Trade Representative (USTR) established the Industry Functional Advisory Committee on Electronic Commerce for Trade Policy Matters (the Committee) on August 17, 1999.

Electronic Commerce is a driving force in U.S. economic growth and international trade. A primary thrust of U.S. policy on electronic commerce will be to avoid government actions that might impede its growth and development. The Department and the USTR must have regular advice from the U.S. private sector to effectively address these issues and identify new and emerging concerns. The Committee will advise the Secretary and the USTR on electronic commerce issues that could threaten or restrict trade, which encompass issues such as privacy, taxation, standards, consumer protection, authentication, and content, among others. The Committee's advice

will be used to develop USG positions and priorities on electronic commerce for international discussions in bilateral, regional and multilateral discussions, including the WTO, OECD, FTAA, TEP and others.

Background

In section 135 of the Trade Act of 1974, as amended (19 U.S.C. 2155), Congress established a private-sector advisory system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests.

Section 135 directs the President to—

''seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to—

(A) Negotiating objectives and bargaining positions before entering into a trade agreement under [title I of the 1974 Trade Act and section 1102 of the Omnibus Trade and Competitiveness Act of 1988];

(B) The operation of any trade agreement once entered into; including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) Other matters arising in connection with the development, implementation, and administration of the trade policy of the United States. * * *''

The Secretary and the USTR have established seventeen Industry Sector Advisory Committees for Trade Policy Matters (ISACs) and four Industry Functional Advisory Committees for Trade Policy Matters (IFACs) pursuant to section 135. A complete list of these committees appears below:

Industry Sector Advisory Committees for Trade Policy Matters (ISAC) on:
- Aerospace Equipment (ISAC 1);
- Capital Goods (ISAC 2);
- Chemicals and Allied Products (ISAC 3);
- Consumer Goods (ISAC 4);
- Electronics and Instrumentation (ISAC 5);
- Energy (ISAC 6);
- Ferrous Ores and Metals (ISAC 7);
- Footwear, Leather, and Leather Products (ISAC 8);
- Building Products and Other Materials (ISAC 9);
- Lumber and Wood Products (ISAC 10);
- Nonferrous Ores and Metals (ISAC 11);
- Paper and Paper Products (ISAC 12);
- Services (ISAC 13);
- Small and Minority Business (ISAC 14);
- Textiles and Apparel (ISAC 15);
- Transportation, Construction, Mining, and Agricultural Equipment (ISAC 16);
- Wholesaling and Retailing (ISAC 17); and

Industry Functional Advisory Committees on Trade Policy Matters (IFAC) on:
- Customs (IFAC 1);
- Standards (IFAC 2);
- Intellectual Property Rights (IFAC 3).
- Electronic Commerce (IFAC 4).

Functions

The duties of the ISACs and IFACs are to provide the Secretary and the USTR with advice on objectives and bargaining positions for multilateral trade negotiations, bilateral trade negotiations, and other trade-related matters. The committees provide nonpartisan industry input in the development of trade policy objectives. The committees' efforts result in strengthening the U.S. negotiating position by enabling the United States to display a united front when it negotiates trade agreements with other nations.

The ISACs provide advice and information on issues that affect specific sectors of U.S. industry. The IFACs focus on cross-cutting issues that affect all industry sectors, such as customs matters, product standards, intellectual property rights and electronic commerce. Each ISAC may also select a member to serve on each IFAC so that a broad range of industry perspectives is represented.

Committees meet an average of four times a year in Washington, DC. Members are responsible for all travel expenses incurred to attend the meetings.

Membership

ISAC and IFAC members are appointed jointly by the Secretary of Commerce and the USTR. Appointments are made at the initial chartering of the Committee, at the rechartering of each committee and periodically throughout the two-year charter period. Members serve at the discretion of the Secretary and USTR. Appointments to an ISAC/IFAC expire at the end of the committee's charter. However, members may be reappointed for one or more additional terms should the committee's charter be renewed and if the member proves to work effectively with the committee and his/her expertise is still needed.

The IFAC on Electronic Commerce is chartered for 40 members total, 23 directly appointed members and 17 elected members to represent each of the ISACs. The committee's charter expires March 19, 2000.

Qualifications

The Secretary and USTR invite nominations to the Committee of U.S. citizens who will represent U.S. manufacturing or service companies that trade internationally, or trade associations whose members are U.S. companies that trade internationally. Companies must be at least 51 percent beneficially-owned by U.S. persons. U.S.-based subsidiaries of foreign companies in general do not qualify for representation on the committees.

Nominees will be considered based upon their ability to carry out the goals of section 135 of the Trade Act of 1974, as amended. Secondary criteria are ensuring that the committee is balanced in terms of points of view, demographics, geography and company size. By law, appointments are made without regard to political affiliation.

Application Procedures

Requests for applications should be sent to the Director of the Industry Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 2015–B, Washington, DC 20230.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. App) and 21 CFR part 14 relating to advisory committees.

Dated: July 30, 1999.

Michael J. Copps,

Acting Assistant Secretary for Trade Development.

[FR Doc. 99–22424 Filed 8–27–99; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.080999G]

Notice of Availability of Bycatch Estimates Under the Harbor Porpoise Take Reduction Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS has provided harbor porpoise bycatch estimates for January through December 1998 and January through April of 1999.

ADDRESSES: Send information requests to: Donna Wieting, Marine Mammal Division, Office of Protected Resources (F/PR2), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Harbor

Porpoise Bycatch Estimates. Copies of the information may also be requested from Richard Merrick, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543; or Doug Beach, Northeast Regional Office (F/NER3), One Blackburn Dr., Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Donna Wieting, Office of Protected Resources, NMFS, at (301) 713–2322, ext. 157; Richard Merrick, Northeast Fisheries Science Center, (508) 495–2291; or Doug Beach, Northeast Region, (978) 281–9254.

SUPPLEMENTARY INFORMATION: NMFS implemented a plan in December of 1998 to reduce harbor porpoise bycatch in the Northeast sink gillnet fishery to below the Potential Biological Removal (PBR) level for that stock. The Harbor Porpoise Take Reduction Plan includes a combination of management measures including fishery closures and gear modifications. The Harbor Porpoise Take Reduction Plan aims to reduce New England harbor porpoise takes through two types of gillnet fishery closures: (1) Closures to all vessels except those using acoustic deterrent devices (or ''pingers'') and (2) In a limited number of cases, complete closures to all sink gillnet gear.

NMFS is hereby making available harbor porpoise incidental take levels for 1998 and the months of January through April of 1999, as estimated by NMFS' Northeast Fisheries Science Center.

For 1998, the total estimated bycatch of harbor porpoise was 778 animals. For January through April of 1999, total estimated bycatch of harbor porpoise was 157 animals (104 in the Gulf of Maine and 53 in the Mid-Atlantic). NMFS considers the numbers to be the best estimates of harbor porpoise mortality in gillnet fisheries in the Gulf of Maine and the Mid-Atlantic during the time frames specified.

NMFS will make information publicly available on harbor porpoise incidental take on a calendar-year quarterly basis through the end of the year 2001. Notification of the information availability will be published in the **Federal Register** on an annual basis.

This information along with other material provided by NMFS staff will be reviewed by the Gulf of Maine Harbor Porpoise Team to evaluate what further action may be necessary for the coming year.

Dated: August 23, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22467 Filed 8–27–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082399C]

Marine Mammals; File No. 848–1335

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that the NMFS Southwest Fisheries Science Center, Honolulu Laboratory, 2570 Dole Street, Honolulu, HI 96822–2396, has requested an amendment to scientific research and enhancement Permit No. 848–1335.

DATES: Written or telefaxed comments must be received on or before September 29, 1999.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

Protected Resources Program Manager, Pacific Islands Area Office, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700 (808/973–2937).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak or Trevor Spradlin, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 848–1335, issued on July 10, 1997 (62 FR 32586) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 848–1335 authorizes the permit holder to: to conduct population assessment, disease assessment, recovery actions, and pelagic ecology studies of Hawaiian monk seals (*Monachus* schauinslandi) at all locations within the Hawaiian Archipelago and at Johnston Atoll, through May 31, 2002. Research methods include: observation and monitoring; capture; physical and chemical restraint; flipper tagging and retagging; instrumentation; bleach marking; measuring and weighing; blood and tissue sampling; swabbing; biopsy sampling (blubber); lavage; capture for the purpose of rehabilitation and release to the wild; experimental medical treatment; and relocation or removal of up to 10 adult male Hawaiian monk seals from the Northwestern Hawaiian Islands, in the event that such seals are known to cause mortality to nursing or weaned pups.

The Permittee is now requesting to amend Activity IV, Task 7 of the permit to increase the number of animals authorized to be taken from 30 to 100 seals annually for the duration of the permit. In addition, authorization is requested to: (1) allow retrieval of time-depth recorders (TDRs) from Hawaiian monk seals; (2) provide additional take by instrumentation (including sonic tags) to support continued research into the foraging ecology of Hawaiian monk seals; and (3) allow an additional procedure, isotopic water dilution, to estimate the body composition as an indication of foraging success and condition of study subjects. Activity IV, Task 7 currently authorizes seals to be captured, sedated, blood sampled, and tagged with various instrument packages up to two times each (once to apply the instrument package and once to remove it).

For this amendment, some of these seals may be taken up to three times: Once to apply a VHF transmitter; a second time to apply a TDR or satellite-linked time-depth recorder (SLTDR), and a third time to retrieve the TDR/SLTDR. The increased takes are necessary to: (1) remove time-depth recorders (TDRs) from weaned Hawaiian monk seal pups, and (2) continue research on Hawaiian monk seal foraging ecology in future years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 24, 1999.

Ann Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–22466 Filed 8–27–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

August 12, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 19, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482094212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927095850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482093715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67050, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 12, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man09made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 19, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit1A[1]
Levels in Group I	
352/652	2,212,828 dozen.
36909S1A[2]	9,917 kilograms.
611	5,201,529 square meters.
633	56,384 dozen.
636	1,910,481 dozen.
643	606,355 numbers.
645/646	736,831 dozen.
649	5,714,665 dozen.
65909H1A[3]	1,659,613 kilograms.
847	330,211 dozen.
Group II 20009227, 30009326, 332, 35909O1A[4], 360, 362, 363, 36909O1A[5], 40009414, 43409438, 440, 442, 444, 448, 459pt.1A[6], 464, 469pt.1A[7], 60009607, 61309629, 644, 65909O1A[8], 666, 66909O1A[9], 67009O1A[10], 831, 83309838, 84009846, 85009858 and 859pt.1A[11], as a group.	239,200,611 square meter equivalent.

[1]1AThe limits have not been adjusted to account for any imports exported after December 31, 1998.

[2]1ACategory 36909S: only HTS number 6307.10.2005.

[3]1ACategory 65909H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4]1ACategory 35909O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 35909C); and 6406.99.1550 (Category 359pt.).

[5]1ACategory 36909O: all HTS numbers except 6307.10.2005 (Category 36909S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[6]1ACategory 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[7]1ACategory 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[8]1ACategory 65909O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 65909C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 65909H); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[9]1ACategory 66909O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 66909P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[10]1ACategory 67009O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 67009L).

Category	Adjusted twelve-month limit1A[1]

[1]11ACategory 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99-21478 Filed 8-18-99; 8:45 am]

BILLING CODE 351009DR09F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Thursday, September 9, 1999, 1:00–4:00 p.m.

PLACE: Central America and Eurasia Rooms at the Overseas Private Investment Corporation (OPIC), 1100 New York Avenue, NW, 12th floor, Washington, DC 20005.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Welcome
II. Approval of Minutes and Proceedings of March, 1999, Board Meeting
III. Report from the Chief Executive Officer
IV. Committee Reports
  A. Executive Committee
  B. Management Committee
  1. Action Plan Update
  C. Planning and Evaluation Committee
  D. Communications Committee
V. Reports by Boys and Girls Clubs of America and Volunteers of America
VI. Program Updates
  A. Service-Learning Award and Recognition Programs
  B. AmeriCorps*National Civilian Community Corp's Fifth Year
  C. Fifth Year Anniversary of AmeriCorps
  D. White House Conference on Philanthropy
VII. Public Comment
VIII. Future Board Meetings
IX. Adjournment

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person.

CONTACT PERSON FOR FURTHER INFORMATION: Rhonda Taylor, Associate Director of Special Projects and Initiatives, Corporation for National Service, 8th Floor, Room 8619, 1201 New York Avenue NW, Washington, D.C. 20525. Phone (202) 606–5000 ext. 282. Fax (202) 565–2794. TDD: (202) 565-2799.

Dated: August 26, 1999.

Thomasenia P. Duncan,

General Counsel, Corporation for National and Community Service.

[FR Doc. 99–22661 Filed 8–26–99; 3:31 pm]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: August 20, 1999.

FOR FURTHER INFORMATION CONTACT: Marilyn D. Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army (Manpower and Reserve Affairs), 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Office, Secretary of the Army are:

1. Mr. Brian E. Burke, Principal Deputy Assistant Secretary of the Army (Civil Works), Office of the Assistant Secretary of the Army (Civil Works).
2. Mr. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research), Office of the Under Secretary.
3. Mr. Paul Johnson, Deputy Assistant Secretary of the Army (Installations & Housing), Office of the Assistant Secretary of the Army (Installations & Environment).
4. Mr. Keith Charles, Deputy Assistant Secretary for Plans & Programs, Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology).
5. Mr. John McLaurin, Deputy Assistant Secretary of the Army (Military Personnel Management and Equal Opportunity Policy), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).
6. Mr. Thomas Taylor, Senior Deputy General Counsel; Office of the General Counsel.
7. Mr. David Borland, Vice Director to the Director of Information Systems for Command, Control, Communications, and Computers (DISC4).
8. Dr. Robert Raynsford, Special Advisor for Economic Policy and Productivity Programs, Office of the Assistant Secretary of the Army (Financial Management and Comptroller).
9. Mr. George Bruno, Special Assistant to the Deputy Under Secretary of the Army (International Affairs).
10. Mr. Francis E. Reardon, The Auditor General.
11. Ms. Kathryn Condon, Special Assistant for Resources and Military Support, Office of the Assistant Secretary of the Army (Installations and Environment).
12. Ms. Sandra Riley, Deputy Administrative Assistant to the Secretary of the Army, Office of the Secretary.
13. Dr. Daniel Willard, Special Assistant for Air and Missile Defense, Office of the Deputy Under Secretary of the Army (Operations Research).
14. Mr. Michael L. Davis, Deputy Assistant Secretary of the Army (Policy and Legislation), Office of the Assistant Secretary of the Army (Civil Works).
15. Mr. Raymond Fatz, Deputy Assistant Secretary of the Army (Environmental Safety and Occupational Health), Office of the Assistant Secretary of the Army (Installations and Environment).
16. Dr. Theodore W. Prociv, Deputy Assistant Secretary of the Army (Chemical Demilitarization), Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).
17. Mr. David Snyder, Deputy Assistant Secretary of the Army (Civilian Personnel Policy), Office of the Secretary of the Army (Manpower and Reserve Affairs).
18. Mr. Earl Stockdale, Deputy General Counsel (Civil Works and Environment), Office of the General Counsel.
19. BG James C. Hylton, Director of Programs and Architecture, DISC4.
20. BG Hugh B. Tant III, Director, Operations and Support, Office of the Assistant Secretary of the Army (Financial Management).

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–22438 Filed 8–27–99; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Final Notice of Modification of Nationwide Permit 29 for Single Family Housing

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final notice.

SUMMARY: On April 30, 1998, a court order was issued by the United States District Court, District of Alaska, remanding the Secretary of the Army to consider lower acreage limits for Nationwide Permit (NWP) 29 and consider excluding high value waters from NWP 29. NWP 29 authorizes discharges of dredged or fill material into non-tidal waters of the United States for the construction of single family residences, including attendant features. The court order also prohibited the Corps of Engineers (Corps) from accepting preconstruction notifications for any NWP 29 activity after June 30, 1998. In the July 1, 1998, **Federal Register** (63 FR 36040–36078) the Corps proposed to modify NWP 29 to reduce the acreage limit from ½ acre to ¼ acre. In that **Federal Register** notice, the Corps also announced the suspension of NWP 29 for activities that result in the loss of greater than ¼ acre of non-tidal waters of the United States. As a result of the Corps review of the comments received in response to the July 1, 1998, **Federal Register** notice, NWP 29 has been modified to reduce the acreage limit to ¼ acre. In response to the court order and the modification of NWP 29, the Corps has also issued a new environmental assessment (EA) for NWP 29. The new EA responds to the court order by addressing the use of NWP 29 in high value waters of the United States, including the process whereby division and district engineers restrict or prohibit the use of NWP 29 to authorize discharges of dredged material into high value waters. The revised EA also discusses the Corps consideration of lower acreage limits for NWP 29 and the Corps decision to reduce the acreage threshold to ¼ acre. Since the revised EA fulfills the requirements of the court order, the Corps is no longer prohibited from receiving and processing preconstruction notifications for proposed NWP 29 activities. PCNs for NWP 29 will be accepted starting September 30, 1999.

DATES: The modification of NWP 29 is effective on September 30, 1999.

ADDRESSES: Further information can be obtained by writing to: HQUSACE, ATTN: CECW–OR, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson or Mr. Sam Collinson at (202) 761–0199 or access the Corps of Engineers Regulatory Home Page at: http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.

SUPPLEMENTARY INFORMATION: Nationwide Permit (NWP) 29, which authorizes discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of single family housing and attendant features, was first issued on July 27, 1995, as part of the President's Wetlands Plan to ensure that regulatory programs are fair, flexible, and effective. NWP 29 was issued to reduce the regulatory burden on small landowners who desire to build or expand a single family home on their property. NWP 29 was reissued on December 13, 1996, with minor modifications, for a period of five years.

On July 15, 1996, a lawsuit was filed in Alaska District Court by several organizations against the Corps, challenging the issuance of NWP 29 under Section 404 of the Clean Water Act (CWA), the National Environmental Policy Act (NEPA), and the Endangered Species Act (ESA). The plaintiffs challenged the issuance of NWP 29 because they believe that: (1) the Corps violated the CWA by issuing an NWP for activities that result in more than minimal adverse environmental effects; (2) the Corps violated the CWA by issuing an NWP for activities that are not similar in nature; (3) the Corps violated the procedural requirements of the Section 404(b)(1) Guidelines of the CWA; (4) the Corps violated the Endangered Species Act (ESA) by failing to consult with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS); (5) the Corps violated the Fish and Wildlife Coordination Act by failing to consult with the FWS and NMFS; (6) the Corps violated the National Environmental Policy Act (NEPA) by failing to prepare an Environmental Impact Statement (EIS); and (7) the issuance of NWP 29 was arbitrary, capricious, and an abuse of discretion. After the Corps reissued NWP 29 on December 13, 1996, a supplemental complaint was filed by the plaintiffs challenging the reissuance of NWP 29.

On April 30, 1998, a court order was issued by the United States District Court, District of Alaska, remanding the Secretary of the Army to consider excluding high value waters from NWP 29, consider lower acreage limits for NWP 29, and to set forth those considerations in an amended environmental assessment (EA). The court determined that the EA for NWP 29 that was issued on December 10, 1996, inadequately addressed the Corps consideration of the exclusion of high value waters and consideration of lower acreage limits. Pending the Secretary of the Army's consideration of these issues, the court enjoined the Corps from accepting any preconstruction notifications (PCNs) for NWP 29 after June 30, 1998, unless otherwise ordered by the court.

In the July 1, 1998, **Federal Register** notice, the Corps proposed to reduce the acreage limit of NWP 29 from ½ acre to ¼ acre, to provide further assurance that NWP 29 would authorize only those single family housing activities with minimal adverse effects on the aquatic environment, individually or cumulatively. The Corps did not request comments on the other terms and conditions of NWP 29.

In response to the July 1, 1998, **Federal Register** notice, the Corps received more than 80 comments addressing the proposed modification of NWP 29. A number of commenters supported the Corps proposal to reduce the acreage limit of NWP 29 to ¼ acre. Many commenters opposed the proposed acreage limit reduction. Several of these commenters indicated that the Corps has not provided sufficient supporting evidence demonstrating that the lower acreage limit is necessary to ensure that only activities with minimal adverse effects on the aquatic environment are authorized by NWP 29. One commenter stated that decreasing the acreage limit of NWP 29 will result in more landowners seeking individual permits to fill more wetlands. This commenter indicated that the ½ acre limit encourages minimization of impacts to wetlands because landowners have incentive to design their projects to comply with the ½ acre limit of NWP, but that a ¼ acre limit would discourage minimization. This commenter also stated that the proposal is contrary to Administration's wetlands program because lowering the acreage limit will increase burdens on the regulated public by causing more single family housing activities to require individual permits. Several commenters objected to NWP 29, suggesting that it should be revoked.

We believe that a ¼ acre limit for NWP 29 is necessary to ensure that this NWP limits authorization of single family housing activities so that there will be no more than minimal adverse effects on the aquatic environment. NWP 29 is still an effective means of

reducing the regulatory burden on the public for single family housing activities in non-tidal waters of the United States, while minimizing effects on the aquatic environment. It is unnecessary to revoke this NWP because the PCN process allows district engineers to review all proposed activities and determine if those activities comply with the terms and conditions of the NWP and result in minimal adverse effects on the aquatic environment. Regional conditioning of NWP 29 provides for Corps districts to restrict or prohibit the use of NWP 29 to authorize single family housing activities in high value non-tidal waters and ensure that the NWP authorizes only activities with minimal adverse effects on the aquatic environment. We are proposing an NWP condition for all of the NWPs that will address the use of NWPs in critical resource waters (see 64 FR 39252 and the discussion at the end of this preamble).

We disagree that reducing the acreage limit of NWP 29 will substantially increase the number of individual permits for single family housing activities. Most landowners can design their single family residences to comply with the lower acreage limit. The data collected by the Corps concerning the use of NWP 29 during 1996, 1997, and 1998 demonstrates that the average acreage loss resulting from activities authorized by NWP 29 is less than ¼ acre. (The actual data indicates an average of 0.19 acre.) This lower average acreage loss is partly due to the PCN process, because district engineers review each proposed NWP 29 activity and, where appropriate, require additional minimization to ensure that the adverse effects on the aquatic environment are minimal. Reducing the acreage limit for NWP 29 to ¼ acre merely reinforces the on-site avoidance and minimization process required for NWP activities.

Several comments suggested other acreage limits for NWP 29. One commenter recommended a 3 acre limit for NWP 29. Another commenter said that NWP 29 should have the same acreage limit as the proposed modification of NWP 40 for agricultural activities and proposed NWP 39 for residential, commercial, and institutional activities. This commenter believes that the regulated public would be less confused if the PCN thresholds for the proposed NWPs 40 and 39 are the same. Two commenters suggested an acreage limit of ⅒ acre. One commenter suggested an acreage limit of ⅕ acre, based on the average loss of non-tidal wetlands for NWP 29 authorizations cited in the July 1, 1998, **Federal Register** notice.

A 3 acre limit for single family housing activities is unlikely to comply with the minimal adverse effects requirement for general permits, including NWPs, nor is it likely to comply with the condition that requires the permittee to minimize and avoid impacts on-site (see Section 404 Only Condition 4). In addition, a 3 acre limit is unnecessary since approximately 90% of residential landowners in the United States own parcels that are ½ acre or less in size (see the July 27, 1995, **Federal Register** notice (60 FR 38650—38663) announcing the issuance of NWP 29). Single family housing activities resulting in the loss of greater than ¼ acre of waters of the United States can be authorized by individual permits or, if available, regional general permits issued by Corps districts. Reducing the acreage limit of NWP 29 to ⅒ acre would substantially reduce the utility of this NWP and greatly increase the number of individual permits required for many single family housing activities that result in minimal adverse effects on the aquatic environment. All PCNs for NWP 29 activities will be reviewed by district engineers to determine if the proposed work complies with the terms and conditions of NWP 29 and results in minimal adverse effects on the aquatic environment. In addition, division engineers regionally condition NWP 29 to reduce the acreage limit in areas where there is greater potential for more than minimal individual or cumulative adverse effects on the aquatic environment. Regional conditions are adopted to prohibit or restrict the use of NWP 29 in certain high value waters.

A couple of commenters stated that NWP 29 violates Section 404(e) of the Clean Water Act. Several commenters opposed the proposed modification of NWP 29, stating that the NWP would result in more than minimal adverse effects on the aquatic environment. Some commenters stated that the proposed ¼ acre limit would still result in substantial cumulative losses of wetlands from activities authorized by NWP 29. A couple of commenters stated that NWP 29 should be applicable only in isolated wetlands. These commenters also recommended conditioning the NWP to require septic tanks and other sewage disposal and collection systems to be located on uplands to the maximum extent practicable. One commenter stated that the NWP should be conditioned to require the prospective permittee to submit a statement with the PCN demonstrating how impacts to wetlands were avoided and minimized to the maximum extent practicable. One commenter stated that the provision allowing the use of NWP 29 with other NWPs should be removed.

NWP 29 complies with Section 404(e) of the Clean Water Act because it authorizes activities that are similar in nature (i.e., the construction or expansion of single family residences and attendant features). All activities authorized by NWP 29 require submission of a preconstruction notification, which will allow district engineers to review all proposed NWP 29 activities on a case-by-case basis to ensure that those activities result only in minimal adverse effects on the aquatic environment. The PCN process allows district engineers to monitor the use of NWP 29 to determine if the authorized activities will result in more than minimal cumulative adverse effects on the aquatic environment on a watershed basis. We do not agree that it is necessary to restrict the use of NWP 29 only to isolated waters or condition the NWP to limit sewage disposal systems to uplands. State and local regulations usually address the siting of sewage disposal systems. In those areas where state and local regulations do not address the siting of sewage disposal systems, district engineers can consider that issue during review of the PCN. Through regional conditions, division engineers can prohibit or restrict the use of NWP 29 in high value waters identified by district engineers. Division or district engineers can also exercise discretionary authority and require an individual permit for single family housing activities that involve discharges into high value waters, if those discharges will result in more than minimal adverse effects on the aquatic environment.

We do not agree that using NWPs other than NWPs 14, 18, or 26 with NWP 29 should be prohibited. For example, bank stabilization activities authorized by NWP 13 may be necessary to protect the home site from erosion. District engineers will review all NWP 29 activities, including those which involve the use of other NWPs to authorize single and complete projects, to ensure that the proposed work will result in minimal adverse effects on the aquatic environment.

Paragraph (c) of NWP 29 requires the permittee to take all practicable actions to minimize on-site and off-site impacts resulting from discharges of dredged material into waters of the United States. This condition reinforces the requirements of Section 404 Only Condition 4, which states that discharges of dredged or fill material into waters of the United States must be

minimized or avoided to the maximum extent practicable on the project site. We do not believe it is necessary to require a statement from the prospective permittee to demonstrate that impacts to waters of the United States have been avoided on-site to the maximum extent practicable for these small projects. District engineers will review PCNs for all NWP 29 activities and may require additional minimization on a case-by-case basis.

One commenter recommended that the requirement for vegetated buffers should be deleted, because the Corps lacks the regulatory authority to impose such a requirement.

The Corps currently has regulatory authority through the Clean Water Act to require vegetated buffers for NWP 29 activities where such vegetated buffers, including upland buffers, help prevent degradation of water quality and aquatic habitat. The establishment and maintenance of wetland or upland vegetated buffers adjacent to open waters, streams, or other waters of the United States can be considered compensatory mitigation for losses of waters of the United States authorized by Corps permits. One of the goals of the Clean Water Act is the maintenance and restoration of the chemical, physical, and biological integrity of the Nation's waters. Regulatory agencies can place conditions on a permit or authorization as long as those conditions are related to the activities regulated by that agency. The Section 404 activities regulated by the Corps usually cause adverse effects on the aquatic environment. To offset these adverse effects, we can require measures, such as vegetated upland buffers adjacent to streams, that prevent or reduce adverse effects on the aquatic environment. Vegetated buffers, including uplands, adjacent to open waters of the United States provide many of the same functions and values of wetlands, such as flood mitigation, erosion reduction, the removal of pollutants and nutrients from water, and support aquatic habitat values. Permit applicants must recognize that NWPs are optional permits and if the applicant believes that the NWPs are too restrictive, then he or she can apply for authorization under the individual permit process.

In response to the court order issued by the United States District Court for the District of Alaska and the modification of NWP 29, we have issued a modified environmental assessment (EA) for NWP 29. The revised EA considers lower acreage limits and the exclusion of high value waters. For NWP 29, the Corps has several mechanisms to protect high value waters, including wetlands. In high value waters, division and district engineers can: (1) prohibit the use of the NWP in those waters and require an individual permit or regional general permit; (2) decrease the acreage limit for the NWP; (3) add regional conditions to the NWP to ensure that the adverse environmental effects are minimal; or (4) add special conditions to specific NWP authorizations, such as compensatory mitigation requirements, to ensure that the adverse effects on the aquatic environment are minimal. NWPs can authorize activities in some high value waters as long as the individual and cumulative adverse effects on the aquatic environment are minimal.

Corps districts also monitor cumulative impacts to ensure compliance with the CWA. Corps districts generally monitor regulated activities on a watershed basis to ensure that the activities authorized by NWP 29 and other Corps general permits do not result in more than minimal cumulative adverse effects on the aquatic environment in a particular watershed. Division engineers will revoke NWP 29 in high value aquatic environments or in specific geographic areas (e.g., watersheds), if they determine that the use of NWP 29 in these areas will result in more than minimal individual and/or cumulative adverse environmental effects to the aquatic environment.

All activities authorized under NWP 29 require preconstruction notification to the Corps. The preconstruction notification allows district engineers to review each proposed single family housing activity to determine if that activity will result in minimal adverse environmental effects, and if necessary, add special conditions to the NWP authorization to further minimize adverse effects on the aquatic environment. If the proposed work will result in more than minimal adverse environmental effects on the aquatic environment, then the District Engineer will exercise discretionary authority to require an individual permit, with the requisite alternatives analysis and public interest review.

The general conditions for the NWPs apply to NWP 29, and can be found in the December 13, 1996, issue of the **Federal Register** (61 FR 65874–65922). NWP 29 will expire on February 11, 2002, unless otherwise modified, suspended, or revoked. The modification of NWP 29 does not require new Section 401 water quality certifications or Coastal Zone Management Act consistency determinations since the modification decreased the acreage limit, which will result in fewer single family housing activities that can be authorized by NWP 29.

As a result of our consideration of comments received in response to the October 14, 1998, **Federal Register** notice, we have proposed in the July 21, 1999, **Federal Register** (64 FR 39252–39371), three new NWP general conditions to further protect the aquatic environment. If adopted, these new general conditions will become effective when the new and modified NWPs that will replace NWP 26 become effective. General Condition 25 prohibits the use of several NWPs, including NWP 29, to authorize discharges of dredged or fill material into designated critical resource waters, including wetlands adjacent to those waters. For the purposes of General Condition 25, designated critical resource waters include NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally-listed threatened and endangered species, coral reefs, State natural heritage sites, and outstanding natural resource waters officially designated by the state in which those waters are located. Discharges into National Wild and Scenic Rivers or adjacent wetlands may be authorized by NWP if the activity complies with General Condition 7. Discharges into designated critical habitat for Federally-listed threatened or endangered species may be authorized by NWP if the activity complies with General Condition 11 and the FWS or NMFS has concurred in a determination of compliance with General Condition 11. General Condition 26 addresses the use of NWPs to authorize discharges in impaired waters of the United States and wetlands adjacent to those impaired waters. For the purposes of General Condition 26, impaired waters are those waters of the United States that have been identified by States or Tribes through the Clean Water Act Section 303(d) process as impaired due to nutrients, organic enrichment resulting in low dissolved oxygen concentration in the water column, sedimentation and siltation, habitat alteration, suspended solids, flow alteration, turbidity, or the loss of wetlands. General Condition 26 requires the prospective permittee to clearly demonstrate that the activity will not further impair the waterbody. General Condition 27 prohibits the use of several NWPs, including NWP 29, to authorize permanent, above-grade fills in waters of the United States in 100-year floodplains.

Dated: August 23, 1999.

Eric R. Potts,

Colonel, U.S. Army, Executive Director of Civil Works.

Accordingly, Nationwide Permit 29 is modified as follows:

29. *Single Family Housing:* Discharges of dredged or fill material into non-tidal waters of the United States, including non-tidal wetlands, for the construction or expansion of a single-family home and attendant features (such as a garage, driveway, storage shed, and/or septic field) for an individual permittee provided that the activity meets all of the following criteria:

a. The discharge does not cause the loss of more than ¼ acre of non-tidal waters of the United States, including non-tidal wetlands;

b. The permittee notifies the District Engineer in accordance with the ''Notification'' general condition;

c. The permittee has taken all practicable actions to minimize the on-site and off-site impacts of the discharge. For example, the location of the home may need to be adjusted on-site to avoid flooding of adjacent property owners;

d. The discharge is part of a single and complete project; furthermore, that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of ¼ acre for the entire subdivision;

e. An individual may use this NWP only for a single-family home for a personal residence;

f. This NWP may be used only once per parcel;

g. This NWP may not be used in conjunction with NWP 14, NWP 18, or NWP 26, for any parcel; and,

h. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation.

For the purposes of this NWP, the acreage of loss of waters of the United States includes the filled area previously permitted, the proposed filled area, and any other waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. Whenever any other NWP is used in conjunction with this NWP, the total acreage of impacts to waters of the United States of all NWPs combined, can not exceed ¼ acre. This NWP authorizes activities only by individuals; for this purpose, the term ''individual'' refers to a natural person and/or a married couple, but does not include a corporation, partnership, or similar entity. For the purposes of this NWP, a parcel of land is defined as ''the entire contiguous quantity of land in possession of, recorded as property of, or owned (in any form of ownership, including land owned as a partner, corporation, joint tenant, etc.) by the same individual (and/or that individual's spouse), and comprises not only the area of wetlands sought to be filled, but also all land contiguous to those wetlands, owned by the individual (and/or that individual's spouse) in any form of ownership.'' (Sections 10 and 404)

[FR Doc. 99–22285 Filed 8–27–99; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 29, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 24, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement.

Type of Review: Reinstatement.

Title: National Assessment of Educational Progress (NAEP) Secondary Analysis Grant Program.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 15.

Burden Hours: 360.

Abstract: Congress has mandated that reports be produced using the data from the National Assessment of Educational Progress. This grant program will encourage researchers to study the NAEP data and expand our understanding of the relationship between school and student characteristics and academic achievement. Grant applicants will be universities, educational research organizations and consulting firms.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *vivian__*reese@ed.gov or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Kathy Axt at 703–426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–22380 Filed 8–27–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.128G]

Vocational Rehabilitation Service Projects Program for Migrant and Seasonal Farmworkers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000.

Purpose of Program: To provide grants for vocational rehabilitation services to individuals with disabilities who are migrant or seasonal farmworkers, as determined in accordance with rules prescribed by the Secretary of Labor, and to the family members who are residing with those individuals (whether or not those family members are individuals with disabilities).

Eligible Applicants: A State designated agency; nonprofit agencies working in collaboration with a State agency; and a local agency working in collaboration with a State agency.

Deadline for Transmittal of Applications: December 1, 1999.

Deadline for Intergovernmental Review: January 30, 2000.

Applications Available: September 1, 1999.

Available Funds: $660,000.

Estimated Range of Awards: $150,000—$170,000.

Estimated Average Size of Awards: $165,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; and (b) The regulations in 34 CFR part 369.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes. The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.128G.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team (GCST), U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Mary E. Chambers, U.S. Department of Education, 400 Maryland Avenue, SW., room 3322, Switzer Building, Washington, DC 20202–2647. Telephone (202) 205–8435. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 29 U.S.C. 774.

Dated: August 25, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–22440 Filed 8–27–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council, and invites people to participate. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: Thursday, September 16, 1999 from 1 p.m. to 4:30 p.m.

ADDRESSES: Holiday Inn Capitol, Clark Room, 550 C Street, SW, Washington, DC 20202, near the Federal Center Southwest and L'Enfant metro stops.

FOR FURTHER INFORMATION CONTACT: Libby Doggett or Kim Lawrence, U.S. Department of Education, 330 C Street, SW, Room 3080, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–9754.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685(c) of the Individuals with Disabilities Education Act (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify

areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

The meeting of the FICC is open to the public and will be physically accessible. Anyone requiring accommodations such as an interpreter, materials in Braille, large print, or cassette please call Kim Lawrence at (202) 205–5507 ten days in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW, Room 3080, Switzer Building, Washington, DC 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–22371 Filed 8–27–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

DATE: September 16, 1999.

TIME: 9: a.m. to 2 p.m., open; 2 p.m. (approximately) to 5 p.m., closed.

LOCATION: Room 100, 80 F St., NW, Washington, D.C. 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208–7564. Tel.: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma__Leenhouts@ed.gov, or nerppb@ed.gov. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board, is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (OERI) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. From 9 a.m. to 2 p.m., the Board will conduct outstanding business in open session and hear reports on its recommendations regarding peer review and on the midterm evaluations of the research and development centers. The meeting will be closed to the public from approximately 2 p.m. to 5 p.m. under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) and under exemptions 4 and 9(B) of Section 552b of title 5 U.S.C. The Board will discuss proposals of a privileged or confidential nature and other information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. A final agenda will be available from the Board office on September 9, 1999, and will be posted on the Board's web site, *http://www.ed.gov/offices/OERI/NERPPB/*.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the office of National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW, Washington, DC 20208–7564.

Dated: August 24, 1999.

Eve M. Bither,

Executive Director.

[FR Doc. 99–22406 Filed 8–27–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Floodplain and Wetlands Involvement for the Development of Soil Borrow Areas Near the Weldon Spring Site

AGENCY: Office of Environmental Management, DOE.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to develop two soil borrow areas at the Weldon Spring Site, located in St. Charles County, Missouri. The borrow areas would provide materials necessary to fill the Weldon Spring quarry. The proposed action will ensure continued protectiveness of human health and the environment. The proposed borrow areas contain a number of small wetlands and, in addition, one of the borrow areas is located within the Missouri River 100 year-floodplain. In accordance with 10 CFR Part 1022, DOE is preparing a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

DATES: Comments are due to the address below no later than September 14, 1999.

ADDRESSES: Comments should be addressed to Mr. Steve McCracken, U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, MO 63304. Comments may be faxed to (636)447–0739.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION, CONTACT: Mr. Steve McCracken, U. S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, MO 63304, (636)441–8978.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202)586–4600 or (800)472–2756.

SUPPLEMENTARY INFORMATION: The DOE is conducting response actions at its Weldon Spring Site under the direction of the DOE Office of Environmental Management. The Weldon Spring Site is located in St. Charles County, Missouri, approximately 48 km (30 miles) west of St. Louis. As part of the overall cleanup of the Weldon Spring Site, the DOE is proposing to backfill an abandoned quarry, located approximately 3.9 km

(2.5 miles) southwest of the site, within the State of Missouri Weldon Spring Conservation Area. The quarry was used for the disposal of chemically and radioactively contaminated materials between the 1940s and 1960s. Removal of bulk waste from the quarry was completed in October, 1995. This action is intended to mitigate physical hazards associated with an open quarry and eliminate ponded water in the sump.

Two soil borrow areas are proposed as the source for the fill material. The primary area proposed for the excavation of borrow material is located approximately 0.37 km (0.23 mile) southwest of the quarry, within the Weldon Spring Conservation Area. This proposed borrow area is approximately 8 ha (20 acres) in size, bounded by Femme Osage Creek, Femme Osage Slough, and Little Femme Osage Creek, and is approximately 1.2 km (0.77 mile) from the Missouri River. One small palustrine forested wetland occurs within the area to be excavated, and several small palustrine wetlands occur in immediately adjacent areas. This proposed borrow area lies entirely within the 100 year floodplain of the Missouri River. A second area proposed for excavation of material, if necessary, is located approximately 1.7 km (1.1 miles) northeast of the quarry, and is also within the Weldon Spring Conservation Area. This proposed borrow area is approximately 1.2 ha (3.1 acres) in size and lies approximately 75 m (246 feet) from a perennial tributary of the Little Femme Osage Creek. Several small palustrine wetlands occur within, and adjacent to, the area proposed for excavation.

Contaminated bulk materials and soil have been excavated from within the quarry and all exposed surfaces have been decontaminated. The proposed action would prevent any further migration of contaminants from the quarry. The anticipated volume of fill material required for the proposed action would be approximately 86,400 m^3 (113,000 yd^3). Excavation depth within the principal borrow area would be approximately 2.4 m (8 feet); the additional borrow area also would be excavated to a depth of approximately 2.4 m (8 feet). Erosion controls would be installed down gradient from all excavations to prevent the transport of silt downstream by stormwater flows. Restoration of excavated areas would include grading to avoid steep or vertical slopes.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), DOE is preparing a floodplain and wetlands assessment for this proposed DOE action. After DOE issues the assessment, a floodplain statement of findings will be published in the **Federal Register**.

Issued in Oak Ridge, Tennessee on August 19, 1999.

James L. Elmore,

Alternate Oak Ridge Operations, National Environmental Policy Act, Compliance Officer.

[FR Doc. 99–22423 Filed 8–27–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Teleconference Meeting

AGENCY: Department of Energy.

ACTION: Notice of open teleconference meeting.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee teleconference:

Name: Secretary of Energy Advisory Board

The purpose of the teleconference is to discuss the findings and recommendation of the Task Force on Fusion Energy, a subcommittee of the Board.

DATES AND TIME: Thursday, September 2, 1999, 1:30 PM–3:00 PM Eastern Time.

ADDRESSES: Participants may call the Office of the Secretary of Energy Advisory Board at (202) 586–7092 to reserve a teleconference line and receive a call-in number. Public participation is welcomed. However, the number of teleconference lines are limited and are available on a first come basis.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The Secretary of Energy Advisory Board (Board) reports directly to the Secretary of Energy and is chartered under the Federal Advisory Committee Act, section 624(b) of the Department of Energy Organization Act (Public Law 95–91). The Board provides the Secretary of Energy with essential independent advice and recommendations on issues of national importance. On September 2, the Board will conduct a teleconference to discuss Realizing the Promise of Fusion Energy: Final Report of the Task Force on Fusion Energy (August 9, 1999), a report by a subcommittee of the Board.

Purpose of the Task Force on Fusion Energy

The Secretary of Energy directed the Board to form the Task Force on Fusion Energy, a subcommittee of the Board, to conduct a thorough review of all the Department's fusion energy technologies, both inertial and magnetic. The review was to analyze and provide recommendations on the role of each of these fusion technologies as part of a national fusion energy research program. The analysis was to address whether the current and planned resources within the Office of Fusion Energy Sciences budget are appropriately balanced among the concepts to provide the scientific basis for an informed selection of the best option for development as a fusion energy source.

The SEAB Task Force on Fusion Energy was to take into account the program's relationship to international fusion energy programs, the connection of inertial fusion energy research to the stockpile stewardship activities in Defense Programs, and the broader science and educational goals that may be enabled by fusion technologies.

Tentative Agenda

Thursday, September 2, 1999

1:30 PM–1:40 PM—Welcome & Opening Remarks—SEAB Chairman Andrew Athy
1:40 PM–2:00 PM—Overview of Fusion Energy Task Force's Findings and Recommendations—Task Force Chairman, Richard Meserve
2:00 PM–2:30 PM—Public Comment Period
2:30 PM–3:00 PM—SEAB Review & Comment and Action—SEAB Chairman Andrew Athy
3:00 PM—Adjourn

This tentative agenda is subject to change.

Public Participation: The Chairman of the Secretary of Energy

Advisory Board is empowered to conduct the teleconference in a way that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its teleconference, the Board welcomes public comment. Members of the public will be heard during the public comment period. The Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Elizabeth Mullins, Executive Director,

Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: Minutes and a transcript of the teleconference will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Information on the Secretary of Energy Advisory Board and copies of the subject report may also be found at the Board's web site, located at http://www.hr.doe.gov/seab

Issued at Washington, D.C., on August 25, 1999.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 99–22602 Filed 8–27–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–470–000]

Black Marlin Pipeline Company; Notice of Request For Waiver

August 23, 1999.

Take notice that on August 17, 1999, Black Marlin Pipeline Company (Black Marlin), tendered for filing a request for waiver of the provisions of Order No. 587–I which require an interactive web site.

Black Marlin states that it does not have an interactive EBB today. Black Marling states that there are only six active shippers who nominate at five receipt points and only four operators who confirm on Black Marlin. Black Marlin states that it has only four delivery points and is not part of the interstate pipeline grid. Black Marlin further states that the shippers on Black Marlin submit monthly nominations with few changes during the month. Black Marlin states that the nominations and confirmation process is currently accomplished by the use of fax communications and that no shipper has requested an interactive electronic nomination/confirmation process.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22415 Filed 8–21–99; 8:45 am]

BILLING CODE 6717–d–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–38–000]

Destin Pipeline Company, L.L.C.; Notice of Filing Non-Conforming Rate Schedule FT–2 Service Agreements

August 24, 1999.

Take notice that on June 15, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing in the above-captioned docket a copy of transportation service agreements under Rate Schedule FT–2, which agreements deviate from the form of Rate Schedule FT–2 Service Agreement in Destin's FERC Gas Tariff, Original Volume No. 1.

Specifically, Destin will provide transportation service pursuant to the terms and conditions of the Service Agreements between Destin and Mobil Oil Exploration and Producing Southeast Inc. (Mobil) and between Destin and Phillips Production Company (Phillips) dated May 5, 1999, and June 11, 1999, respectively, under Destin's Rate Schedule FT–2. Destin is filing these Service Agreements as non-conforming due to the special discounting contingency contained in Exhibit C thereto. Destin states that for Rate Schedule FT–2 shippers, the Transportation Demand is set forth in quarterly periods and mirrors expected production profiles for committed reserves, which is commercially sensitive production information. Destin further states that due to the proprietary and commercially sensitive nature of such Transportation Demand profile contained in Exhibits A and B to the Service Agreements, such confidential information has been redacted from the Service Agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 30, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22379 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–469–000]

Destin Pipeline Company, L.L.C; Notice of Proposed Changes to FERC Gas Tariff

August 23, 1999.

Take notice that on August 13, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, (Tariff) the following tariff sheets to become effective October 1, 1999:

First Revised Sheet No. 2
Second Revised Sheet No. 12
First Revised Sheet No. 22a
First Revised Sheet No. 30
First Revised Sheet No. 136a

Destin states that the purpose of this filing is to revise the Tariff with respect to the generic types of rate discounts that may be granted by Destin. Destin has requested that these sheets be made effective as of October 1, 1999. Destin states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22414 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–605–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

August 23, 1999.

Take notice that on August 19, 1999, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP99–605–000 a request pursuant to sections 157.205, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon in place certain delivery facilities located in Jasper County, Texas under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–0400 for assistance).

Koch Gateway utilizes these facilities to provide natural gas service on behalf of Reliant Energy Entex, a Division of Reliant Energy Resources Corporation (Entex), a local distribution company. Entex has agreed to connect the tap to its local distribution system and no longer requires natural gas service from these facilities.

Any questions regarding this application should be directed to Kyle Stephens at (713) 544–7309, Koch Gateway Pipeline Company, P.O. Box 1478, Houston, Texas, 77251–1478.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22410 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–429–002]

Midwestern Gas Transmission Company; Notice of Compliance Filing

August 23, 1999.

Take notice that on August 18, 1999, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, tendered for filing Second Substitute Sixth Revised Sheet No. 110(A) for inclusion in Midwestern's FERC Gas Tariff, Second Revised Volume No. 1. Midwestern requests that the revised tariff sheet be made effective August 1, 1999.

Midwestern states the revised tariff sheet is an errata correction for a sheet submitted on August 4, 1999, in compliance with the Commission's July 20, 1999 Letter Order issued in Docket No. RP99–429 (July 20 Order). Midwestern states that in the July 20 Order as corrected, the Commission required Midwestern to file a revised tariff sheet which separately identifies as GISB Version 1.2 certain existing data sets. Midwestern further states that in the August 4, 1999 compliance filing, two of the twenty-three data sets were not correctly shown as GISB Version 1.2. and that the revised tariff sheet reflects the proper changes.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22413 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–600–000]

National Fuel Gas Distribution Corporation; Notice of Petition for Declaratory Order

August 23, 1999.

Take notice that on August 13, 1999, as supplemented on August 16, and August 19, 1999, National Fuel Gas Distribution Corporation (Distribution) 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP99–600–000, a petition pursuant to Section 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order regarding the jurisdictional status and regulatory compliance of Norse Pipeline, LLC (Norse) and its affiliate, Nornew Energy Supply, Inc. (Nornew), all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on a web at www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Distribution explains that the Commission previously found Norse to be a non-jurisdictional gathering company, but noted that certain changes in Norse's operations could alter that status. *Columbia Gas Transmission Corporation, Norse Pipeline, LLC*, 85 FERC 61,191 (1998), *reh'g denied*, 86 FERC 61,137 (1999). Distribution asserts that recent business transactions may have alerted Norse's status. Distribution believes that the public commitment of

Nornew, Norse's affiliate, to provide service to the Jamestown Board of Public Utilities (JBPU) using newly constructed facilities and the Norse system appears to be interstate natural gas transportation service.

Distribution contends that Norse was put on notice by the Commission that future flows of interstate gas onto its system would obviate Norse's non-jurisdictional status and require Norse to apply for Section 7 authorization. Nornew, its affiliate, has entered business commitments different from that described in the order, above. Because of Norse's gathering system status. Distribution says Norse appears to have entered into affiliated entity transactions that would strictly be prohibited for a jurisdictional pipeline. Distribution states that Norse's affiliate, Nornew is committing to construct a pipeline through which interstate gas will flow, which may require either certification under the NGA or state regulations as a ''Hinshaw'' pipeline.

Therefore, Distribution submits that Norse is offering to operate as an unregulated but jurisdictional interstate pipeline by providing transportation for a supplier (its affiliate, Nornew) to a newly-connected power station and that such operation have placed Distribution at a significant disadvantage in the New York marketplace. Both Distribution and Nornew bid for the transportation contract for JBPU. Distribution says Nornew won by using Norse's transportation service.

Distribution wants the Commission to answer the following questions:

1. Would Norse's transportation to JBPU of interstate natural gas supplies delivered from an interstate pipeline (such as Tennessee at Mayville) trigger the requirement that Norse obtain a certificate under Section 7 of the NGA?

2. Would Norse be required to obtain its Section 7 certificate before providing interstate service as contemplated under the JBPU service proposal?

3. Would Nornew become an interstate natural gas pipeline by building and operating a pipeline that is engaged in the transportation of interstate natural gas supplies, as contemplated by the JBPU proposal? and,

4. If Norse or Nornew were to become an interstate pipeline as a consequence of the JBPU transaction, would the Commission's regulations and standards applicable to interstate pipelines (including affiliated marketer restrictions) apply to contracts executed before the commencement of interstate service but which would require interstate transportation?

Distribution wants the Commission to act quickly on these questions as it will guide all the parties in the development of service to the power plant. Distribution believes Norse and Nornew show no signs of complying with any NGA jurisdictional regulations and that there is a significant possibility that affiliate preferences are being granted in ways completely contrary to the policies of the Commission.

Any questions regarding this petition may be directed to Christopher J. Barr, Esq., Morgan, Lewis & Bockius, LLP, 1800 M Street, NW, Washington, DC 20036 (202) 467–7142 or Alice A. Curtiss, Senior Regulatory Attorney, National Fuel Gas Distribution Corporation, 10 Lafayette Square, Buffalo, New York 14203 (716) 857–7951.

Any person desiring to be heard or to make any protest with reference to said petition should on or before September 13, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22408 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES99–50–000]

New York Independent System Operator, Inc.; Notice of Application

August 23, 1999.

Take notice that on August 18, 1999, the New York Independent System Operator, Inc. (NYISO) withdrew its July 28, 1999 application under Section 204 of the Federal Power Act for authorization to assume short-term indebtedness in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions and protests should be filed on or before September 2, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22411 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–604–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

August 23, 1999.

Take notice that on August 19, 1999, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed a request with the Commission in Docket No. CP99–604–000, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new direct delivery point for service to Interconn Resources, Inc. (Interconn), authorized in blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Southern Natural Gas Company proposes to construct and operate certain measurement and other appurtenant facilities in order to provide transportation service to Interconn at a new delivery point for service at the Beaulieu of America Plant. Such delivery point would be located at approximately Mile Post 97.7 on Southern's 12″ Cleveland Branch Line in Whitfield County, Georgia. The

estimated cost of the construction and installation of the facilities would be approximately $231,200. Interconn states that they would reimburse Southern for the cost of constructing and installing the proposed facilities.

Southern further states that it would transport gas on behalf of Interconn under its Rate Schedule IT. Southern reports that the installation of the proposed facilities would have no adverse effect on its ability to provide its firm deliveries.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If not protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22409 Filed 8–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–412–002]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

August 23, 1999.

Take notice that on August 18, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, tendered for filing Second Substitute Ninth Revised Sheet No. 412 for inclusion in Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee requests that the revised tariff sheet be made effective August 1, 1999.

Tennessee states the revised tariff sheet is an errata correction for a tariff sheet submitted on August 6, 1999, in compliance with the Commission's July 23, 1999 Letter Order issued in Docket No. RP99–412 (July 23 Order). Tennessee states that in the July 23 Order, the Commission required Tennessee to file revised tariff sheets which separately identify as GISB Version 1.2 certain existing data sets. Tennessee further states that in the August 6, 1999, compliance filing two of the twenty-three data sets were not correctly shown as GISB Version 1.2 and that the revised tariff sheet reflects the proper changes.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22412 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–472–000]

Transcontinental Gas Pipe Line Corporation; Notice of filing

August 23, 1999.

Take notice that on August 18, 1999, Transcontinental Gas Pipe Line Corporation tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached thereto. The proposed effective date of the revised tariff sheets is October 1, 1999.

Transco states that the purpose of the instant filing is to revise Transco's tariff to update the negotiated rate authority contained therein to reflect developments in Commission policy relating to negotiated rates. Transco initially filed tariff sheets in Docket No. RP96–359 to establish the flexibility under its tariff to negotiate rates in accordance with the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines in Docket No. RM95–6–000, which tariff sheets were approved by the Commission. Since that filing, the Commission has further refined its negotiated rate policy in numerous individual pipeline proceedings. Transco proposes herein to revise its tariff to reflect, among other things, those refinements in order to provide to Transco and its shippers the full range of flexibility to negotiate rates for service consistent with Commission policy.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22416 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–9–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 23, 1999.

Take notice that on August 18, 1999, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing with the Federal Energy Regulatory Commission (Commission) Sixteenth Revised Sheet No. 28 to its FERC Gas Tariff, Third Revised Volume No. 1. The attached tariff sheet is proposed to be effective August 1, 1999.

Transco states that the purpose of the instant filing is track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. The filing is being made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of

Transco's Third Revised Volume No. 1 Tariff.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22417 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–830–004, et al.]

Merrill Lynch Capital Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 23, 1999.

Take notice that the following filings have been made with the Commission:

1. Merrill Lynch Capital Services, Inc. and Lakeside Energy Services, LLC

[Docket Nos. ER99–830–004 and ER99–505–002]

Take notice that on August 3, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. PS Energy Group, Inc., Salko Energy Services, Inc., River City Energy, Inc., Central Maine Power Company, and Carolina Power & Light Company

[Docket Nos. ER99–1876–001, ER99–1052–002, ER99–823–002, ER99–4027–000 and ER99–4032–000]

Take notice that on August 9, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Long Beach Generation LLC, El Segundo Power, LLC, Cargill-Alliant, LLC

[Docket Nos. ER99–4054–000, ER99–4053–000 and ER99–4015–000]

Take notice that on August 11, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Dartmouth Power Associates Limited Partnership

[Docket No. ER99–4023–000]

Take notice that on August 5, 1999, the above-mentioned power marketer/or public utility tendered for filing a quarterly report with the Commission in above-referenced proceeding for information only.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc.

[Docket No. ER98–2028–001]

Take notice that on August 17, 1999, Entergy Services, Inc., tendered for filing a refund report in the above-referenced docket.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Energy Services, Inc.

[Docket No. ER97–4347–007]

Take notice that on August 16, 1999, Northeast Energy Services, Inc. (Noresco), tendered for filing its quarterly transaction report for the Second Quarter of 1999 in the above-referenced docket.

7. Electric Clearinghouse, Inc.

[Docket No. ER94–968–028]

Take notice that on August 16, 1999, Electric Clearinghouse, Inc., tendered for filing its summary of activity for the quarter ended June 30, 1999.

8. California Independent System Operator Corporation

[Docket No. ER98–3594–002]

Take notice that on August 17, 1999, California Independent System Operator Corporation (ISO), tendered for filing revised tariff sheets originally filed with the Commission on August 12, 1999, in the above-referenced docket.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. U.S. Power & Light, Inc.

[Docket No. ER96–105–015]

Take notice that on August 5, 1999, the above-mentioned power marketer/or public utility tendered for filing quarterly report with the Commission in above-referenced proceeding for information only.

10. GPU Advanced Resources, Inc., 3E Technologies, Inc., PacifiCorp Power Marketing, Inc.

[Docket Nos. ER97–3666–010, ER98–3809–002 and ER95–1096–019]

Take notice that on August 11, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only.

11. Pelican Energy Management, Inc., Abacus Group Ltd.

Docket Nos. ER98–3084–004 and ER98–4240–001]

Take notice that on August 9, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only.

12. Northern/AES Energy, LLC, DTE-CoEnergy L.L.C.

[Docket Nos. ER98–445–006 and ER97–3835–008]

Take notice that on August 3, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only.

13. California Power Exchange Corporation

[Docket No. ER99–2021–001]

Take notice that on August 18, 1999, California Power Exchange Corporation filed revised tariff sheets to comply with the Commission's July 28, 1999, order in this proceeding.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Southern California Edison Company

[Docket No. ER99–3182–000]

Take notice that on August 18, 1999, Southern California Edison Company (SCE) tendered for filing supplemental information regarding its filing in the above-captioned docket.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. WPS Resources Operating Companies

[Docket No. ER99–3417–000]

Take notice that on August 18, 1999, WPS Resources Operating Companies filed an amendment in response to the Commission's August 4, 1999, deficiency letter for its filing with the firm point-to-point transmission service agreement for Madison Gas & Electric Company.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power Corporation

[Docket No. ER99–4099–000]

Take notice that on August 17, 1999, Florida Power Corporation (FPC), tendered for filing a service agreement between Florida Municipal Power Agency (FMPA) and FPC for service under FPC's Cost-Based Wholesale Power Sales Tariff (CR–1), FERC Electric Tariff, Original Volume No. 9.

FPC requests an August 11, 1999 effective date for the service agreement.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Elwood Energy LLC

[Docket No. ER99–4100–000]

Take notice that on August 17, 1999, Elwood Energy LLC (Elwood), tendered for filing an agreement for the sale of electric energy and capacity by Elwood to Engage Energy US, L.P., dated April 5, 1999.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Duke Energy Corporation

[Docket No. ER99–4101–000]

Take notice that on August 17, 1999, Duke Energy Corporation tendered for filing an Interconnection Agreement Between Yadkin, Inc., and Duke Energy Corporation.

Duke requests an effective date of October 17, 1999, for the Interconnection Agreement.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Milford Power Company, LLC

[Docket No. ER99–4102–000]

Take notice that on August 17, 1999, Milford Power Company, LLC (Milford Power), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

Milford Power proposed that its Rate Schedule No. 1 become effective upon commencement of service of the Milford Power Plant (the Plant), a generation project currently being developed by Milford Power in the State of Massachusetts. The Plant will commence the sale of test power in August, 2000, but will not be commercially operable until the first quarter of 2001.

Milford Power intends to sell energy and capacity from the Plant at market-based rates, and on such terms and conditions to be mutually agreed to with the purchasing party.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Orange and Rockland Utilities, Inc.

[Docket No. ER99–4103–000]

Take notice that on August 17, 1999, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing a Service Agreement between Orange and Rockland and PP&L, Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of August 8, 1999, for the Service Agreement.

Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Orange and Rockland Utilities, Inc.

[Docket No. ER99–4104–000]

Take notice that on August 17, 1999, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing a Service Agreement between Orange and Rockland and PP&L, Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of August 15, 1999, for the Service Agreement.

Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Orange and Rockland Utilities, Inc.

[Docket No. ER99–4105–000]

Take notice that on August 17, 1999, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing a Service Agreement between Orange and Rockland and PP&L, Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of August 22, 1999, for the Service Agreement.

Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. PP&L, Inc.

[Docket No. ER99–4106–000]

Take notice that on August 17, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated July 22, 1999 with Morgan Stanley Capital Group Inc. (Morgan) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds Morgan as an eligible customer under the Tariff.

PP&L requests an effective date of August 17, 1999 for the Service Agreement.

PP&L states that copies of this filing have been supplied to Morgan and to the Pennsylvania Public Utility Commission.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Southwest Power Pool

[Docket No. ER99–4107–000]

Take notice that on August 17, 1999, Southwest Power Pool (SPP), tendered for filing executed service agreements for loss compensation firm service, and short-term and non-firm point-to-point transmission service under the SPP Tariff with Columbia Water & Gas Company (Columbia).

SPP requests an effective date of July 23, 1999 for the agreement for loss compensation service, and July 24, 1999 for the agreements for short-term firm and non-firm transmission service.

Copies of this filing were served upon Columbia.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Southwest Power Pool, Inc.

[Docket No. ER99–4108–000]

Take notice that on August 17, 1999, Southwest Power Pool, Inc. (SPP), tendered for filing changes to its Open Access Transmission Tariff intended to allow network customers to elect to be treated on the same basis as their host transmission provider for purposes of determining the megawatt-mile impact of related point-to-point transactions.

SPP requests an effective date of August 18, 1999 for these changes.

Copies of this filing were served upon members and customers of SPP, and on all affected state commissions.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Pacific Gas and Electric Company

[Docket No. ER99–4110–000]

Take notice that on August 17, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing: (1) two Quitclaim Conveyance Agreements with the City and County of San Francisco (City), pursuant to which PG&E is transferring title to and ownership of two transformers and associated equipment to the City, which ownership transfer agreements were completed before the operation date of the facilities, which were constructed for the City's sole benefit; and (2) a request for termination of the two related agreements between PG&E and City, both dated December 30, 1994, and respectively entitled ''Special Facilities Agreement for Pacific Gas and Electric's Airport Substation Facilities for Service to the City and County of San Francisco's Station BA'' and ''Special Facilities Agreement for PG&E's Millbrae Substation Facilities for Service to CCSF's Station M.''

Copies of this filing have been served upon City and the California Public Utilities Commission.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. The Montana Power Company

[Docket No. ER99–4111–000]

Take notice that on August 17, 1999, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an executed Firm and executed Non-Firm Point-To-Point Transmission Service Agreements with Transalta Energy Marketing (US) Inc., under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Transalta Energy Marketing (US) Inc.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. California Power Exchange Corporation

[Docket No. ER99–4113–000]

Take notice that on August 18, 1999, the California Power Exchange Corporation (CalPX), tendered for filing a new Electric Service Tariff No. 2, which is intended to supersede CalPX's existing tariff and protocols.

CalPX proposes to make Tariff No. 2 effective 60 days after filing on October 18, 1999.

CalPX states that it has served copies of its filing on the PX Participants and on the California Public Utilities Commission. The filing also has been posted on CalPX's website at http://www.calpx.com.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Sonat Power L.P.

[Docket No. ER96–2343–013]

Take notice that on August 17, 1999, Sonat Power Marketing L.P. (SPMLP), tendered for filing a three year update to its market power study in compliance with the Commission's Order in Docket No. ER96–2343–000, granting SPMLP market rate authority.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22407 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 77–110—California Potter Valley Project]

Pacific Gas and Electric Company; Notice of Proposed Restricted Service List for a Memorandum of Agreements for Managing Properties Potentially Eligible for Inclusion in the National Register of Historic Places

August 24, 1999.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the California State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. Section 470 f), to prepare a memorandum of agreement for managing properties potentially eligible for inclusion in the National Register of Historic Places at Project No. 77.

[1] 18 CFR 385.2010.

The memorandum of agreement, when executed by the Commission, the SHPO, and possibly by the Council, would satisfy the Commission's Section 106 responsibilities for the proposed amendment filed by the Pacific Gas & Electric Company to protect and maintain the anadromous fishery in the Upper Eel River. The Commission's responsibilities pursuant to Section 106 for the above project would be fulfilled through the memorandum of agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed memorandum of agreement would be incorporated into any Orders amending the license.

Pacific Gas & Electric, as licensee for Project No. 77, is invited to participate in consultations to develop the memorandum of agreement and to sign as a concurring party to the memorandum of agreement.

For purposes of commenting on the memorandum of agreement, we propose to restrict the service list for the aforementioned amendment as follows:

John Fowler, Advisory Council on Historic Preservation, The Old Post Office Building, 1100 Pennsylvania Avenue, NW, #809, Washington, DC 20004

Mr. Daniel Abeyet, Acting State Historic Preservation Officer, CA State Office of Historic Preservation, P.O. Box 942896, Sacramento, CA 94296–0001

Ms. Rhonda Shiffman, Pacific Gas & Electric Company, Mail Code N11C, P.O. Box 770000, San Francisco, CA 94177

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date.

An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE, Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on the motion.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22378 Filed 8–27–99; 8:45 am]

BILLING CODE 6710–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 20, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 29, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0734.

Title: Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996.

Form Number: SEC 10–K.

Type of Review: Revision.

Respondents: Business or other for-profit entities.

Number of Respondents: 168 respondents.

Estimated Time Per Response: 1074.6 hours per response (avg.).

Total Annual Burden: 180,547 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $633,000.

Frequency of Response: Annually, Biennially, On occasion, Recordkeeping.

Needs and Uses: In Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order in CC Docket No. 96–150 (Report and Order), the Commission addressed the accounting safeguards necessary to satisfy the requirements of section 260 and 271 through 276 of the Telecommunications Act of 1996. The Report and Order prescribed the way incumbent local exchange carriers (ILECs), including the Bell Operating Companies (BOCs), must account for transactions with affiliates involving, and allocate costs incurred in the provision of, both regulated telecommunications services and nonregulated services, including telemessaging, interLATA telecommunications and information services, telecommunications equipment and customer premises equipment manufacturing, electronic publishing, alarm monitoring services and payphone service. The Commission concluded that its current cost allocation rules generally satisfy the 1996 Act's accounting safeguards requirements when ILECs, including the BOCs, provide services permitted under sections 260 and 271 through 276 on an in-house basis. The Commission also concluded that its current affiliate transactions rules generally satisfy the 1996 Act's accounting safeguards requirements when ILECs, including the BOCs, are required to, or choose to, use an affiliate to provide services permitted under sections 260 and 271 through 276. In the Report and Order, the Commission also modified its affiliate transaction rules to provide greater protection against subsidization of competitive activities by subscribers to regulated telecommunications services. Section 274(F) establishes a reporting requirement for separate electronic publishing affiliates created pursuant to section 274. In the Report and Order, the Commission concluded that its rules should require those section 274 affiliates that already file an SEC Form 10–K to file a copy with this Commission. For those section 274 affiliates that were not required to file a Form 10–K with the SEC, the Commission required them to file an identical form with us. In CC Docket No. 98–81, released June 30, 1999, the Commission modified the holding in the

Report and Order and concluded that the information contained in the limited version of the SEC Form 10–K, with certain modifications, is sufficient to enable the Commission to monitor electronic publishing affiliates' compliance with the section 274 requirements. The Commission concludes that the information contained in the limited version of SEC Form 10–K, with certain modifications, will enable the Commission to monitor the electronic publishing affiliate's compliance with the section 274 requirements. The Commission modify the limited Form 10–K filing requirements to exclude Item 5 and include Item 10. The information collections will enable the Commission to ensure that the subscribers to regulated telecommunications services do not bear the costs of these new nonregulated services and that transactions between affiliates and carriers will be at prices that do not ultimately result in unfair rates being charged to ratepayers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–22403 Filed 8–27–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2354]

Petitions for Reconsideration of Action in Rulemaking Proceeding

August 20, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by September 14, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Stanfield), OR) (MM Docket No. 99–44).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Sales,

Secretary.

[FR Doc. 99–22404 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2355]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

August 20, 1999.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by September 14, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Truth-in-Billing and Billing Format (CC Docket No. 98–170).

Number of Petitions Filed: 6.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–22405 Filed 8–27–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Meeting Notice

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, August 31, 1999, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's corporate, insurance, and resolution activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 7th Street, NW, Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. James D. LaPierre, Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: August 26, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–22663 Filed 8–26–99; 3:51 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 24, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Julie Freeman, Bartlesville, Oklahoma; to retain voting shares of Peoples Bankshares, Inc., Mora, Minnesota, and thereby indirectly retain voting shares of Peoples National Bank of Mora, Mora, Minnesota.

Board of Governors of the Federal Reserve System, August 25, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–22469 Filed 8–27–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the

assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 23, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Village Bancorp, Inc., Prospect Heights, Illinois; to acquire 100 percent of the voting shares of Village Bank and Trust of Munster, Munster, Indiana, a de novo bank.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Alta Vista Bancshares, Inc., Alta Vista, Kansas; to become a bank holding company by acquiring 91 percent of the voting shares of Alta Vista State Bank, Alta Vista, Kansas.

2. SJN Banc Co., St. John, Kansas; to become a bank holding company by acquiring 66.35 percent of the voting shares of St. John National Bank, St. John, Kansas.

Board of Governors of the Federal Reserve System, August 24, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22370 Filed 8–27–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-21590) published on page 45548 of the issue for Friday, August 20, 1999.

Under the Federal Reserve Bank of New York heading, the entry for Popular Inc., and Popular International Bank, Inc., both of Hato Rey, Puerto Rico, and Popular North America, Inc., Mt. Laurel, New Jersey, is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Popular Inc., and Popular International Bank, Inc., both of Hato Rey, Puerto Rico, and Popular North America, Inc., Mt. Laurel, New Jersey have applied to acquire 100 percent of the voting shares of Banco Popular, National Association, Orlando, Florida.

In connection with this application, Banco Popular, National Association, Orlando, Florida; has applied to establish Popular Insurance, Inc., Culebra, Puerto Rico, as an agreement Corporation, pursuant to § 25A of the Federal Reserve Act, and a wholly owned subsidiary of Banco Popular, National Association, Orlando, Florida.

Comments on this application must be received by September 10, 1999.

Board of Governors of the Federal Reserve System, August 25, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–22470 Filed 8–27–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. The Royal Bank of Scotland Group plc, The Royal Bank of Scotland plc, and RBSG International Holdings Limited, all of Edinburgh, Scotland; to become bank holding companies by acquiring 100 percent of the voting shares of Citizens Financial Group, Providence, Rhode Island, and thereby indirectly acquire Citizens Bank Rhode Island, Providence, Rhode Island, Citizens Bank of Massachusetts, Boston, Massachusetts, Citizens Bank New Hampshire, Manchester, New Hampshire, and Citizens Bank of Connecticut, New London, Connecticut.

In connection with this application, RBSG International Holdings Limited, Edinburgh, Scotland, has also applied to acquire Citizens Capital, Inc., Boston, Massachusetts, and thereby engage in mezzanine financing, pursuant to § 225.28(b)(1) of Regulation Y, and NYCE Corporation, Woodcliff Lake, New Jersey, and thereby engage in data processing and check verification services, pursuant to §§ 225.28(b)(14) and (b)(2) of Regulation Y, respectively.

B. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Synovus Financial Corp., Columbus, Georgia; to merge with Horizon Bancshares, Inc., Pensacola, Florida, and thereby indirectly acquire Horizon Bank of Florida, Pensacola, Florida.

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Citizens Banking Corporation, Flint, Michigan; to acquire 100 percent of the voting shares of F & M Bancorporation, Inc., Kaukauna, Wisconsin, and thereby indirectly

acquire F&M Northeast, Pulaski, Wisconsin; F&M Kaukauna, Kaukauna, Wisconsin; F&M Lakeland, Woodruff, Wisconsin; F&M Waushara County, Wautoma, Wisconsin; F&M Winnebago County, Omro, Wisconsin; F&M East Troy, East Troy, Wisconsin; F&M Portage County, Stevens Point, Wisconsin; F&M Appleton, Appleton, Wisconsin; F&M Fennimore, Fennimore, Wisconsin; F&M Kiel, Kiel, Wisconsin; F&M Brodhead, Brodhead, Wisconsin; F&M Jefferson, Jefferson, Wisconsin; F&M New London, New London, Wisconsin; F&M Hilbert, Hilbert, Wisconsin; F&M Algoma, Algoma, Wisconsin; F&M Superior, Superior, Wisconsin; F&M Prairie du Chien, Prairie du Chien, Wisconsin; F&M Darlington, Darlington, Wisconsin; F&M Landmark, Hudson, Wisconsin; F&M Dundas, Dundas, Minnesota; F&M Iowa Central, Marshaltown, Iowa; F&M Story City, Story City, Iowa; F&M South Central, Grinnell, Iowa; and F&M Bank Elkhorn, Elkhorn, Wisconsin.

In connection with this application, Applicant has also applied to acquire F & M Trust Company, Kaukauna, Wisconsin, and thereby engage in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Lea M. McMullan Trust, Lea M. McMullan, Trustee (as managing general partner for the target partnership), Shelbyville, Kentucky; to become a bank holding company by acquiring 35.81 percent of the voting shares of L.B.S. McMullan Limited Partnership, Shelbyville, Kentucky, and thereby indirectly acquire Citizens Union Bancorp of Shelbyville, Inc., Shelbyville, Kentucky, Citizens Union Bank of Shelbyville, Shelbyville, Kentucky, and First Farmers Bank & Trust Company, Warsaw, Kentucky.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Parkway National Bancshares, Inc., Plano, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Parkway Bank, N.A., Plano, Texas.

Board of Governors of the Federal Reserve System, August 25, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–22471 Filed 8–27–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225), to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 13, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Boston Private Financial Holdings, Inc., Boston, Massachusetts; to acquire RINET Company, Inc., Boston, Massachusetts, and thereby indirectly acquire Cornerstone Fund Advisors, Inc., Boston, Massachusetts, and thereby engage in tax-planning and preparation services and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, August 24, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22369 Filed 8–27–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of meeting on September 16, 1999.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will hold a meeting on Thursday, September 16, 1999, from 9:00 to 4:30 p.m. in room 7C13, the Comptroller General's Briefing Room, of the General Accounting Office building, 441 G St., NW, Washington, DC.

The purpose of the meeting is to discuss:

- National Defense PP&E
  —project plan for Phase 2
  —SARS reporting; issues and options
- Direct Loan and Loan Guarantee Amendments
  —comments letters with summaries
- Other Matters such as Reporting on Indian Trust Funds in Department of the Interior Financial Reports

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW, Room 3B18, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: August 24, 1999.

Wendy M. Comes,

Executive Director.

[FR Doc. 99–22457 Filed 8–27–99; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 1999 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Prevalence of STDs and TB Infection in Persons Entering Corrections Facilities: Correction

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, the Centers for Disease Control and Prevention (CDC) published a notice in the **Federal Register** of August 23, 1999, Volume 64, Number 162, Page 45971, concerning a Special Emphasis Panel to be convened on September 2, 1999, to review and evaluate applications received in

response to Program Announcement #99000–D.

Correction: The meeting will not convene as a Special Emphasis Panel, as announced. Instead, applications received in response to Program Announcement #99000–D will be reviewed and evaluated by means of an internal objective review.

Contact Person for More Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail eowl@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 24, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc 99–22485 Filed 8–25–99; 5:06 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 1999 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Trends in STD Prevalence, Tuberculosis, and HIV Risk Behaviors Among Men Who Have Sex With Men: Correction

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announced the following meeting in the **Federal Register** of August 23, 1999, Volume 64, Number 162, Page 45971–45972.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 1999 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Trends in STD Prevalence, Tuberculosis, and HIV Risk Behaviors among Men Who Have Sex with Men, Program Announcement #99000–E.

Correction: Please note the correct meeting date, as follows:

Time and Date: 8:30 a.m.–9 a.m., September 2, 1999 (Open), 9 a.m.–4:30 p.m., September 2, 1999 (Closed).

CONTACT PERSON FOR MORE INFORMATION: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail eow1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 24, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–22486 Filed 8–25–99; 4:49 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98C–1017]

International Association of Color Manufacturers; Withdrawal of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a color additive petition (CAP 9C0264) proposing that the color additive regulations be amended to provide for the safe use of D&C Red No. 28 and its aluminum lake to color food and dietary supplements.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3071.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 25, 1998 (63 FR 65212), FDA announced that a color additive petition (CAP 9C0264) had been filed by the International Association of Color Manufacturers, c/o Daniel R. Thompson, P.C., 1620 I St., suite 925, Washington, DC 20006. The petition proposed to amend the color additive regulations to provide for the safe use of D&C Red No. 28 and its aluminum lake to color food and dietary supplements. The International Association of Color Manufacturers has now withdrawn the petition without prejudice to a future filing (21 CFR 71.6(c)(2)).

Dated: August 12, 1999.

Laura M. Tarantino,

Deputy Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–22478 Filed 8–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2907]

Alcide Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alcide Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acidified sodium chlorite solutions as an antimicrobial agent on red meat parts and organs.

DATES: Written comments on the petitioner's environmental assessment by September 29, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9A4692) has been filed by Alcide Corp., 8561 154th Ave. NE., Redmond, WA 98052. The petition proposes to amend the food additive regulations in 21 CFR 173.325 to provide for the safe use of acidified sodium chlorite solutions as an antimicrobial agent on red meat parts and organs.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act

(40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 29, 1999, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 17, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–22475 Filed 8–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 16, 1999, 8 a.m. to 4:30 p.m. and September 17, 1999, from 8 a.m. to 12:30 p.m.

Location: Ramada Inn, Embassy Ballroom, 8400 Wisconsin Ave., Bethesda, MD.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 16, 1999, the following committee updates are tentatively scheduled: (1) Summary of the August 26 to 27, 1999, Public Health Service (PHS) Advisory Committee on Blood Safety and Availability meeting; (2) summary of the July 21, 1999, Workshop on Donor Suitability: Donor History of Hepatitis; and (3) guidance document on revised precautionary measures to reduce the possible risk of transmission of Creutzfeldt–Jakob Disease (CJD) and new variant Creutzfeldt–Jakob Disease (nvCJD) by blood and blood products. Other committee updates will be scheduled if the need arises. In the morning, the committee will hear and discuss an informational presentation on strategies for increasing the blood supply and discuss and provide recommendations on nucleic acid testing of blood donors for human parvovirus B–19. In the afternoon, the committee will hear an informational presentation on antigen/antibody testing for malaria.

On September 17, 1999, the committee will sit as a medical device panel for the reclassification of human immunodeficiency virus (HIV) drug sensitivity assays.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 7, 1999. Oral presentations from the public will be scheduled from approximately 10 a.m. to 10:30 a.m.; 11:30 a.m. to 12 noon; and 3 p.m. to 3:30 p.m. on September 16,1999, and from 9 a.m. to 11 a.m. on September 17, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 7, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated:August 22, 1999.

Linda A. Suydam

Senior Associate Commissioner

[FR Doc. 99–22480 Filed 8–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 23 and 24, 1999, 8:30 a.m. to 5 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee conference room, 5630 Fishers Lane, Rockville, MD.

Contact Person: Kimberly Littleton Topper at topperk@cder.fda.gov or Angie Whitacre at whitacre@cder.fda.gov, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 23, 1999, the committee will discuss individual bioequivalence–criteria for equivalence comparisons. On September 24, 1999, the committee will discuss clinical pharmacology–pharmacokinetic/pharmacodynamic issues in drug development and research issues in nonclinical studies.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 8, 1999. Oral

presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 8, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated:August 23, 1999.

Linda A. Suydam

Senior Associate Commissioner

[FR Doc. 99–22479 Filed 8–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Technical Electronic Product Radiation Safety Standards Committee Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Technical Electronic Product Radiation Safety Standards Committee Advisory Committee

General Function of the Committee: To provide advice on technical feasibility, reasonableness, and practicality of performance standards for electronic products to control the emission of radiation under 42 U.S.C. 263f(f)(1)(A).

Date and Time: The meeting will be held on September 15, 1999, 8:30 a.m. to 5:30 p.m., and September 16, 1999, 8:30 a.m. to 2:30 p.m.

Location: Holiday Inn, Lincoln Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Orhan H. Suleiman, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12399. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 15, 1999, the committee will: (1) Discuss proposed amendments to the performance standards for lasers and sunlamp products (21 CFR part 1040), and (2) hear presentations on medical telemetry systems and electronic article surveillance systems. On September 16, 1999, the committee will hear: (1) Presentations concerning nonmedical security devices which result in persons being exposed to ionizing radiation; and (2) presentations concerning conventional fluoroscopy (21 CFR part 1020), and computed tomography fluoroscopy.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 7, 1999. Oral presentations from the public will be scheduled on September 15, 1999, between approximately 11:15 a.m. and 12 noon and between approximately 4:15 p.m. and 5 p.m. Oral presentations from the public will be scheduled on September 16, 1999, between approximately 1 p.m. and 1:45 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 7, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 23, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–22477 Filed 8–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) National Advisory Council in September 1999.

The agenda will include the review, discussion and evaluation of individual grant applications. Therefore a portion of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, Section 10(d).

The open session of the meeting will include presentations of CSAP programs, a CSAP budget update, SAMHSA's Administrator's Report, and discussions of administrative matters and announcements. If anyone needs special accommodations for persons with disabilities, please notify the contact listed below.

A summary of this meeting and roster of committee members may be obtained from Yuth Nimit, Ph.D., Executive Secretary, Rockwall II building, Suite 910, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8455.

Substantive program information may be obtained from the person listed above.

Committee Name: Center for Substance Abuse Prevention National Advisory Council.

Meeting Dates: September 8, 1999/8:30 a.m.–3:00 p.m.(Closed), September 9, 1999/ 8:30 a.m.–4:00 p.m. (Open).

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20841.

Contact: Yuth Nimit, Ph.D., 5515 Security Lane, Rockwall II building, Suite 901, Rockville, Maryland 20852, Telephone: (301) 443–8455.

Dated: August 24, 1999.

Sandra Stephens,

Acting Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–22439 Filed 8–27–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period for the Notice of Intent To Clarify the Role of Habitat in Endangered Species Conservation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: reopening of comment period.

SUMMARY: We (the U.S. Fish and Wildlife Service) reopen the comment period on our notice of intent to develop policy or guidance and/or to revise regulations, if necessary, to clarify the role of habitat in endangered species conservation. We received several requests to extend or reopen the comment period. We solicit public

comments, and we will analyze and incorporate additional comments received during this comment period, as well as those we received during the previous comment period, into new proposed guidance as appropriate.

DATES: We will accept comments on this guidance until October 29, 1999.

ADDRESSES: Submit your comments regarding this guidance to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, NW, Mailstop ARLSQ–420, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703–358–2171 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1999 (64 FR 31871), we published a notice of our intent to develop policy or guidance and/or to revise regulations, if necessary, to clarify the role of habitat in endangered species conservation. In that notice, we sought comments relative to the benefits of the designation of critical habitat (beyond that of listing) and what considerations should be included in our prudency determinations. We also requested comments and suggestions relative to how we can effectively streamline the process of determining and designating critical habitat and specifically whether and how our existing regulations might or should be changed to accomplish this. Additionally, we requested comments and suggestions on possible legislative actions that might improve the effectiveness and efficiency of the critical habitat process.

Public Comments Solicited

We reopen the comment period on this notice in order to provide additional time for interested parties to comment on this important issue. We will take into consideration any comments and additional information received and will announce proposed guidance after the close of the public comment period and as promptly as possible after all comments have been reviewed and analyzed. We will make available for your review and comment any guidance, policy, or regulatory changes that are developed.

Authority

The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: August 19, 1999.

Marshall P. Jones,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–22460 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Great Egg Harbor National Scenic and Recreational River Draft Comprehensive Management Plan and Environmental Impact Statement

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availablity of Great Egg Harbor National Scenic and Recreational River draft Comprehensive Management Plan and Environmental Impact Statement.

SUMMARY: The National Park Service has prepared and released a draft Comprehensive Management Plan and Environmental Impact Statement for the management, protection, and use of the Great Egg Harbor National Scenic and Recreational River in New Jersey. The public is invited to review and comment on the draft plan. For more information about this document, contact Mary Vavra, National Park Service Program Manager by letter or telephone.

FOR FURTHER INFORMATION CONTACT: Mary Vavra, Program Manager, National Park Service, Philadelphia Support Office, 200 Chestnut Street, 3rd Floor, Philadelphia, PA 19106, (215) 597–9175.

Dated: August 9, 1999.

Marie Rust,

Regional Director, Northeast Region, National Park Service.

[FR Doc. 99–22443 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement for Mountain Goat Management Within Olympic National Park, Washington

ACTION: Suspension of Environmental Impact Statement (EIS) Process.

SUMMARY: This Notice announces the suspension of the environmental impact statement process for mountain goat management within Olympic National Park. In early 1999, the Department of the Interior awarded a contract for a review of existing scientific information about mountain goats in Olympic National Park. The science review is being conducted by the Conservation Biology Institute of Corvallis, Oregon. A report from this review will be provided to the Secretary and made available to the public in late 1999 or early 2000. Following receipt of this report, the National Park Service will consider any changes or updates needed to the draft EIS, at which point a supplemental draft EIS may be prepared.

DATES: Dates for resumption of the EIS process will be announced in the **Federal Register**.

ADDRESSES: Questions or comments concerning suspension of the Environmental Impact Statement process should be submitted to: Superintendent, Olympic National Park, 600 East Park Avenue, Port Angeles, WA 98362.

SUPPLEMENTARY INFORMATION: The Draft EIS on mountain goat management was made available to the public in March 1995 (FR, Vol. 60, No. 62, p. 16647). This science review responds to a Congressional request prompted by concerns from some constituents regarding research associated with this issue. A review of the science is a key element in responding to public questions and concerns, and will further inform the EIS decision process for mountain goat management at Olympic National Park.

Dated: August 16, 1999.

William C. Walters,

Deputy Regional Director, Pacific West Region, National Park Service.

[FR Doc. 99–22441 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the thirtieth meeting of the Gettysburg National Military Park Advisory Commission.

Date: The Public meeting will be held on October 21, 1999, from 7:00 p.m.–9:00 p.m.

Location: The meeting will be held at Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

Agenda: Sub-Committee Reports, Update on General Management Plan, Federal Consistency Projects Within the Gettysburg Battlefield Historic District,

Operational Update on Park Activities, and Citizens Open Forum.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated; August 18, 1999.

John A. Latschar,

Superintendent, Gettysburg NMP/Eisenhower NHS.

[FR Doc. 99–22372 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Plan of Operations; Mining Operation Dorothy Lode Claim #1; North Cascades National Park, Skagit County, Washington

Notice is hereby given in accordance with Section 9.17(a) of Title 36 of the Code of Federal Regulations, Part 9, Subpart A, that the National Park Service has received from Mr. William Webster a Proposed Plan of Operations to remove a limited quantity of stockpiled ore from existing workings on the Dorothy Lode Claim #1 in North Cascades National Park. The ore would be transported by helicopter from Thunder Basin east to Washington State Route 20 (the North Cascades Highway).

The Proposed Plan of Operations is available for public review and comment for a period of 30 days from the publication of this notice. The document can be viewed during normal business hours at the Office of the Superintendent, North Cascades National Park, 2105 State Route 20, Sedro Woolley, Washington, 98284–9394.

Dated: August 19, 1999.

William F. Paleck,

Superintendent, North Cascades National Park Service Complex.

[FR Doc. 99–22442 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet on September 14, 1999, to discuss additional 1999 watershed projects, priorities and potential projects for FY 2000, and other issues. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The BDAC Ecosystem Roundtable meeting will be held from 9:30 a.m. to 12:00 p.m. on Tuesday, September 14, 1999.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, Room 1131, 1416 Ninth Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: August 24, 1999.

Neil Stessman,

Acting Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 99–22400 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–94–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23963; 812–11718]

HSBC Securities (USA) Inc., et al.; Notice of Application

August 23, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1) of the Act, under section 6(c) of the Act for an exemption from sections 12(d)(3) and 14(a) of the Act, and under section 17(b) of the Act for an exemption from section 17(a) of the Act.

Summary of Application: HSBC Securities (USA) Inc. (''HSBC Securities'') and HSBC Holdings plc

(''HSBC Holdings,'' together with HSBC Securities, ''HSBC'') request an order with respect to the future HSBC Capital Funding Trusts (''HSBC Trusts'') and future trusts that are substantially similar to the HSBC Trusts and for which HSBC Securities will serve as a principal underwriter (collectively, the ''Trusts'') and all English limited partnerships, the general partner of which is a wholly owned subsidiary of HSBC Holdings and in which the Trusts invest (the ''(Limited Partnerships'') that would (i) permit other registered investment companies to own a greater percentage of the total outstanding voting stock of any Trust (the ''Securities'') than that permitted by section 12(d)(1), (ii) exempt the Trusts from the initial net worth requirements of section 14(a), and (iii) permit the Trusts to purchase certain securities from HSBC or its affiliates at the time of a Trust's initial issuance of Securities.

Applicants: HSBC Securities and HSBC Holdings.

Filing Dates: The application was filed on July 29, 1999. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 13, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: HSBC Securities, 140 Broadway, New York, New York 10005; HSBC Holdings, 10 Lower Thames Street, London EC3 6AE, England.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. no. 202–942–8090).

Applicants' Representations

1. Each Trust will be a limited-life, grantor trust registered under the Act as a non-diversified, closed-end management investment company. HSBC Securities will serve as a principal underwriter (as defined in section 2(a)(29) of the Act) of the Securities issued to the public by each Trust.

2. Each Trust's assets will consist of (i) American Depositary Shares representing preference shares issued by HSBC Holdings (''Shares'') and (ii) a limited partnership interest in a Limited Partnership (the ''Limited Partnership Interest''). As discussed below, the Limited Partnership will hold subordinated debt issued by HSBC Holdings or a member of the HSBC Holdings group. Each Trust's assets will be purchased at the time of and with the proceeds of the issuance and sale of the Securities.

3. Each Trust's investment objective will be to provide to the holders of the Securities (''Holders'') (i) fixed dollar quarterly cash distributions on the Securities over the term of the Trust from the proceeds of the Limited Partnership Interest, to the extent HSBC Holdings would be able to pay dividends on issued and outstanding preference shares, (ii) Shares in exchange for Securities upon a fixed termination date for the Trust, or, if earlier, upon a specified trigger event, and (iii) a fixed dollar amount equal to the subscription price per Security if the Securities are redeemed prior to exchange for Shares.

4. The quarterly distributions on the Securities will be funded by distributions on the Trust's Limited Partnership Interest.[1] The sole business of the Limited Partnerships will be the subscription for, and the holding of, subordinated Eurobonds paying quarterly interest and issued by HSBC Holdings (''Eurobonds'') or other debt with similar terms and conditions to the Eurobonds and issued by a member of the HSBC Holdings group and guaranteed by HSBC Holdings. All distributions on the Limited Partnership Interest will be funded by income payments on the Eurobonds. HSBC Holdings also will provide subordinated guarantees to the Trusts in respect of the Trusts' entitlement to payments relating to the Limited Partnership Interest (the ''Partnership Guarantees''). The Limited Partnerships will not be obligated to make, and the Partnership Guarantees will not guarantee, any payments to the Trusts in any circumstance under which HSBC Holdings would not have been able to pay dividends on issued and outstanding preference shares.

5. On a fixed termination date for each Trust, or, if earlier, upon a specified trigger event,[2] the Limited Partnership Interest will be redeemed and the Trust will distribute to the Holders the number of Shares that is equal to the Holder's pro rata interest in the Shares. If the Shares are redeemed prior to any such exchange, the Holders will instead receive per Security a fixed dollar amount equal to the subscription price for each Security. The Limited Partnership Interests, Shares, and Partnership Guarantees will be structured so as to require redemption of all the securities constituting assets of a Trust if any are redeemed and to ensure that the Trust has sufficient funds to meet its cash obligations. In no event will Holders receive Limited Partnership Interests or Eurobonds.

6. Securities issued by the Trusts will be listed on a national securities exchange or traded on the Nasdaq National Market System. Thus, the Securities will be ''national market system'' securities subject to public price quotation and trade reporting requirements. After the Securities are issued, the trading price of the Securities is expected to vary from time to time based primarily upon the creditworthiness of HSBC Holdings, interest rates, and other factors affecting conditions and prices in the debt markets. HSBC Securities may intend, but will not be obligated, to make a market in the Securities of each Trust.

7. Each Trust will be internally managed by three trustees and will not have any separate investment adviser. A majority of the trustees of each Trust will be individuals who are not interested persons, as defined in section 2(a)(19) of the Act, of the Trust. The trustees will have no power to vary the investments held by each Trust. The Trusts will be structured so that the trustees are not authorized to sell any of the underlying assets and will hold them until, in the case of Shares, their redemption or distribution and, in the case of the Limited Partnership

[1] To the extent necessary to make the quarterly distributions, the Trust may invest distributions paid on the Limited Partnership Interest in short-term U.S. government obligations maturing no later than the business day preceding the next following distribution date of the Limited Partnership Interest.

[2] The specified trigger events will relate to the failure of HSBC Holdings to meet certain solvency conditions established by the United Kingdom Financial Services Authority, its principal regulator.

Interests, its redemption. A bank qualified to serve as a trustee under the Trust Indenture Act of 1939, as amended, will act as custodian for each Trust's assets and may act as administrator, paying agent, registrar, and transfer agent with respect to each Trust's Securities. The day-to-day administration of each Trust will be carried out by such bank.

8. The trustees of each Trust will be selected initially by HSBC, together with any other initial Holders, or by the grantors of the Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote of more than two-thirds of the outstanding Securities of the Trust, to remove a trustee. The Holders will be entitled to a vote for each Security held on all matters to be voted on by the Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and policies of each Trust may be changed only with the approval of all of the Trust's outstanding Securities. Unless the Holders so request, it is not expected that the Trusts will hold any meetings of Holders, or that Holders will ever vote.

9. Each Trust's organizational and ongoing expenses will not be borne by the Holders but will be paid directly or indirectly by a third party (which may include HSBC Securities or HSBC Holdings), as will be described in the prospectus for the relevant Trust. There will be paid annually or quarterly to each of the administrator, the custodian, and the paying agent, and to each trustee, the ongoing amounts in respect of such agent's fee and in the case of the administrator, expenses. These expenses will generally be paid as incurred by a party other than the Trust itself (which party may be HSBC Securities or HSBC Holdings). The Trust agreements will be structured so that no payments in respect of fees and expenses relating to the Trust will be made or payable by the Trust.

10. Applicants assert that the investment product offered by the Trusts serves a valid business purpose. The Trust, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, applicants assert that the Securities are intended to provide Holders with a security having the equivalent payment and risk characteristics of an investment in preference shares of HSBC Holdings, while enabling HSBC Holdings to benefit from favorable regulatory capital and taxation treatments that would not apply were the Holders to invest directly in preference shares.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A)(i) of the Act prohibits any registered investment company from owning more than 3% of the total outstanding voting stock of any other investment company. Section 12(d)(1)(C) of the Act similarly prohibits any investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies from owning more than 10% of the total outstanding voting stock of any closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1), if, and to the extent that, such exemption is consistent with the public interest and protection of investors. Applicants request an order under Section 12(d)(1)(J) to permit other registered investment companies to own a greater percentage of the Securities of any Trust than that permitted by section 12(d)(1).

3. Applicants state that, in order for the Trust to be marketed most successfully, and to be traded at a price that most accurately reflects their value, it is necessary for the Securities to be offered to large investment companies and investment company complexes. Applicants state that large investment companies and investment company complexes seek to spread the fixed costs of analyzing specific investment opportunities by making sizable investments in those opportunities that prove attractive. Conversely, it may not be economially rational for such investors, or their advisers, to take the time to review an investment opportunity if the amount that they would ultimately be permitted to purchase is immaterial in light of the total assets of the investment company or investment company complex. Therefore, applicants argue that in order for the Trusts to be economically attractive to large investment companies and investment company complexes, such investors must be able to acquire Securities in excess of the limitations imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C).

4. Applicants state that section 12(d)(1) was designed to prevent one investment company from buying of other investment companies and creating complicated pyramidal structures. Applicants also state that section 12(d)(1) was intended to address the layering of costs to investors.

5. Applicants assert that the concerns about pyramiding and undue influence generally do not arise in the case of the Trusts because neither the trustees nor the Holders will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts. To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, applicants argue that any concerns regarding undue influence will be eliminated by a provision in the charter documents of the Trusts that will require any investment companies owning Securities of any Trust in excess of the limits imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C) to vote their Securities in proportion to the votes of all other Holders. Applicants also state that the concern about undue influence through a threat to redeem does not arise in the case of the Trusts because the Securities will not be redeemable.

6. Section 12(d)(1) also was designed to address the excessive costs and fees that may result from multiple layers of investment companies. Applicants state that these concerns do not arise in the case of the Trusts because of the limited ongoing fees and expenses incurred by the Trusts and the fact that these fees and expenses will be borne either directly or indirectly by HSBC Holdings or HSBC Securities or another third party, and not by the Holders. In addition, the Holders will not, as a practical matter, bear the organizational expenses (including underwriting expenses) of the Trusts. Applicants assert that the organizational expenses will be borne directly by HSBC Holdings, HSBC Securities, or other third parties. Thus, a Holder will not pay duplicative charges to purchase Securities. Finally, there will be no duplication of advisory fees because the Trusts will not have any separate investment advisers.

B. Section 12(d)(3)

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting (collectively, ''securities-related activities''). Applicants state that because HSBC Holdings is engaged in securities-related activities, the Trusts may be prohibited by section 12(d)(3) from purchasing the Shares and Limited Partnership Interests.

2. Rule 12d3–1 under the Act exempts from the prohibition of section 12(d)(3)

purchases of securities of an issuer engaged in securities-related activities if certain conditions are met. One of these conditions, set forth in rule 12d3–1(c), prohibits the acquisition of a security issued, among other persons, by the investment company's principal underwriter or any affiliated person of the principal underwriter.

3. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (i) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, (ii) any person 5% or more of whose voting securities are directly or indirectly owned, controlled, or held with the power to vote by the other person, and (iii) any person directly or indirectly controlling, controlled by, or under common control with, the other person.

4. Applicants state that HSBC Holdings is an affiliated person of HSBC Securities, the Trusts' principal underwriter. Applicants thus state that they are unable to rely on rule 12d3–1.

5. Applicants request an exemption under section 6(c) of the Act from section 12(d)(3) to permit the Trusts to purchase the Shares and Limited Partnership Interests, provided that the requirements of rule 12d3–1, except paragraph (c), are met. Section 6(c) provides that the SEC may exempt any person or transaction from any provision of the Act or any rule under the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. For the reasons stated below, applicants believe that the requested relief satisfies this standard.

6. Applicants assert that their proposal does not raise the concerns about conflicts of interest that the provisions of rule 12d3–1(c) were designed to address. Applicants state that the Shares and the Limited Partnership Interests will be acquired by the Trusts only at the time of the issuance of the Securities and a Trust's assets will remain fixed for the life of the Trust.

C. Section 14(a)

1. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of a least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a–3 under the Act exempts from section 14(a) unit investment trusts (''UITs'') that meet certain conditions in recognition of the fact that;, once the units are sold, a UIT requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a–3 provides that a UIT investing in eligible trust securities shall be exempt from the net worth requirement, provided that the UIT holds at least $100,000 of eligible trust securities at the commencement of a public offering.

2. Applicants request an order under section 6(c) exempting the Trusts from the requirements of section 14(a). Applicants believe that the exemption is appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act. Applicants assert that, while the Trusts are classified as management companies, they have the characteristics of UITs. Investors in the Trust, like investors in a UIT, will not be purchasing interests in a managed pool of securities, but rather in a fixed portfolio that is held until the termination of the Trust. Applicants believe therefore, that there is no need for an ongoing commitment on the part of the underwriter.

3. Applicants state that, in order to ensure that each Trust will become a going concern, the Securities of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, or in a transaction exempt from such registration, and resulting in net proceeds to each Trust of at least $100,000,000. Prior to the issuance and delivery of the Securities of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the Securities subject to customary conditions to closing. The underwriters will not be entitled to purchase less than all of the Securities of each Trust. Accordingly, applicants state that the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the Securities. Applicants also do not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

D. Section 17(a)

1. Sections 17(a)(1) and 17(a)(2) of the Act generally prohibit the principal underwriter, or any affiliated person of the principal underwriter, of a registered investment company from selling or purchasing any securities to or from that investment company. The effect of these provisions is to preclude the Trusts from purchasing the Shares and the Limited Partnership Interests (including the Partnership Guarantees) from HSBC Holdings and the Limited Partnerships, respectively.

2. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act. Applicants request an exemption under section 17(b) from sections 17(a)(1) and 17(a)(2) to permit the Trusts to purchase Shares and the Limited Partnership Interests (including the Partnership Guarantees) from HSBC Holdings and the Limited Partnerships.

3. Applicants state that they are seeking relief from section 17(a) only with respect to the initial purchase of the Shares and Limited Partnership Interests and not with respect to an ongoing course of business. Applicants state that the terms of the Shares and the Limited Partnership Interests (including the terms of the associated Partnership Guarantees and Eurobonds) and of their purchase will be fully disclosed to investors in the Securities prior to the making of an investment decision. Applicants also state that the Securities are expected to be investment-grade rated securities and that their pricing and economic characteristics will be established by reference to similar investment-grade rated instruments. Applicants assert that, since an investment in the Securities is in effect a proxy for investment in the Shares, and since the Trusts will use all of the proceeds of the offering of the Securities to buy the requisite number of Shares and Limited Partnership Interests, there should be no potential for overreaching by HSBC Holdings or the Limited Partnerships.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Any investment company owning Securities of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents to vote its Trust Securities in proportion to the vote of all other Holders.

2. The investment objectives and policies of each Trust as recited in such Trust's registration statement will fully and accurately describe the investment objectives and policies of the Trust as

set forth in the trust agreement establishing the Trust and may be changed only with the approval of all the Holders of such Trust's outstanding Securities.

3. The underlying securities to be purchased by each Trust will be sufficient to provide payments to Holders of Securities that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trust and the Holders of its Securities.

4. The terms of the transactions will be fair to the Holders of the Securities issued by each Trust and will not involve overreaching of the Trust or the Holders of Securities thereof on the part of any person concerned. Prior to the sale of the Shares and the Limited Partnership Interest to each Trust, the trustees of such Trust, including a majority of trustees who are not interested persons of the Trust, shall have determined that the terms of the transaction, including the price at which the Shares and the Limited Partnership Interest are to be purchased by such Trust, are reasonable and fair and do not involve overreaching on the part of any person concerned.

5. No fee, spread, or other remuneration shall be received by HSBC Securities in connection with the sale of the Shares or the Limited Partnership Interests to the Trust.

6. Each Trust will comply with rule 12d–3 under the Act, except paragraph (c) of the rule to the extent permitted by the order.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22374 Filed 8–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27066]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 23, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 21, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declaration(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 21, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates (70–9527)

Eastern Utilities Associates ("EUA"), One Liberty Square, P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, Eastern Edison Company ("Eastern Edison"), 750 West Center Street, West Bridgewater, Massachusetts 02379, an electric utility subsidiary of EUA, and Montaup Electric Company ("Montaup"), 750 West Center Street, West Bridgewater, Massachusetts 02379, a nonutility subsidiary of Eastern Edison, have filed an application-declaration under sections 6(a)(2), 7, 9(a), 10, and 12(c) of the Act and rules 43 and 46 under the Act.

EUA proposes to acquire from Eastern Edison, and Eastern Edison proposes to transfer to EUA, the securities of Montaup, including: (1) preferred stock; (2) common stock; and (3) debentures ("Montaup Securities"). The transfer of the Montaup Securities to EUA by Eastern Edison will take the form of, and it is also proposed that Eastern Edison make, a special dividend payment comprising all remaining capitalization of Montaup. Eastern Edison further proposes to make the dividend payment out of retained earnings to the maximum extent possible and, thereafter, out of paid-in capital and unearned surplus. Eastern Edison proposes that the dividend payment take the form of a redemption of its common stock, which will be funded with Montaup Securities.

Prior to executing the transactions proposed above (and subject to Commission authorization and the consent of Eastern Edison, as sole shareholder of Montaup), Montaup proposes to amend its corporate charter to eliminate its status as a Section 9A company under Chapter 164 of the Massachusetts General Laws so that its ability to transmit and sell electricity will not be tied to its sole shareholder.

Cinergy Corp., et al. New Century Energies, Inc., et al. (70–9531)

Cinergy Corp. ("Cinergy"), a registered holding company located at 139 East Fourth Street, Cincinnati, Ohio 45202, New Century Energies, Inc. ("NCE"), a registered holding company located a 1225 17th Street Denver, Colorado 80202, and Cadence Network LLC ("Cadence" and together with Cinergy and NCE, "Applicants"), a nonutility company and subsidiary of each of Cinergy and NCE, located at 105 East Fourth Street, Suite 200 Cincinnati, Ohio 45202, have filed a joint application under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 under the Act.

Cinergy and NCE acquired their ownership interests in Cadence in September 1997 under rule 58. Each of Cinergy and NCE indirectly holds a one-third ownership interest in Cadence. Cinergy holds its one-third interest in Cadence through its wholly owned, special-purpose nonutility subsidiary, Cinergy-Cadence, Inc. ("Cinergy-Cadence"); NCE holds its one-third interest in Cadence through its wholly owned, special-purpose nonutility subsidiary, New Century-Cadence, Inc. ("New Century-Cadence"). Both of these subsidiaries were formed under rule 58 in order to acquire and hold Cinergy's and NCE's respective interests in Cadence.

Applicants state that Cadence uses information to reduce energy-related costs for commercial businesses that own and operate families of chain stores or other multi-location retail establishments. Cadence collects, centralizes and redistributes to customers relevant cost information using sophisticated technology. Through The Cadence Network ("Network"), an Internet-based interactive reporting tool developed by Cadence, Cadence's are able to track and manage electricity, natural gas and related costs incurred at their facilities (e.g., with respect to heating ventilation and air conditioning, water/sewage, telephone, cable, and trash collection). The Network anchors other services offered by Cadence that are specifically targeted at reducing the customers' energy-related costs. Currently these services consist of bill verification and

correction,[1] ''best rate'' assurance,[2] and consulting with respect to gas and electric commodity purchasing[3] and energy efficiency projects.[4] Customers compensate Cadence on a fixed fee or shared savings basis. At June 30, 1999, Cadence was serving customers with operations in all 50 states.

As an ''energy-related company,'' as defined under rule 58, substantially all of Cadence's revenues must derive, and, according to Applicants, have derived, from permissible energy-related activities carried out within the United States. However, Applicants assert that this geographical restriction imposes significant business and competitive disadvantages on Cadence, noting, among other things, that certain of Cadence's customers have locations outside of the United States for which they would like Cadence to provide services consistent with the services Cadence provides them in the United States.

Applicants propose that Cadence be permitted to market its utility-related cost reporting and reduction services anywhere outside the United States, without restriction on the amount or proportion of revenues derived from these activities outside the United States. In connection with this proposal, Cinergy and NCE request authority to retain their ownership interests in Cadence, Cinergy-Cadence and New Century-Cadence previously acquired under rule 58. In addition, Applicants propose that this authority cover not merely the utility-related cost reporting and reduction services now in place, but include additional similar and complementary energy-related services that Cadence may develop and seek to offer to customers in future, both in the United States and abroad, provided that in no event would these future services be broader in scope than the energy management services and consulting services approved for Cinergy's nonutility subsidiary, Cinergy Solutions, Inc.[5] Applicants further request that Cadence be granted the flexibility to provide its services directly or indirectly through one or more special-purpose subsidiaries, formed as corporations, partnerships, limited liability companies or other legal entities, as applicable business, legal, tax, accounting or strategic considerations dictate.[6] Cinergy and NCE commit that they will not seek recovery through higher rates to customers of their utility subsidiaries for any losses or inadequate returns arising from the proposed transactions.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR DOC. 99–22425 Filed 8–27–99; 8:45 am]

BILLING CODE 8010–01–M

[1] Under this service option, Cadence audits and otherwise reviews and monitors individual invoices and invoicing patterns for electricity, natural gas and water/sewage service furnished to customer sites. Cadence also identifies clusters of likely savings and provides comparative reports. Once errors are detected, Cadence's utility billing experts isolate the cause and negotiate on the client's behalf directly with the utility supplier for refunds and credits.

[2] Under this service option, Cadence assures that the client's high priority facilities are being assessed optimal utility rates for electricity and natural gas service. Cadence scrutinizes and verifies facility load data and utility rate schedules and negotiates or renegotiates directly with the utility supplier to ensure application of the optimal rates to these high-priority customer facilities. In connection with this program, clients can also authorize Cadence to conduct a national rate assessment, identifying and prioritizing tariff-based rate savings opportunities for electric and natural gas service with respect to all of the customer's sites throughout the United States.

[3] Under this service option, Cadence assists its customers in shopping for electric and natural gas supplies. Cadence can help secure the most attractive commodity rates possible through custom proposals and proposal reviews. After Cadence determines which facilities are most likely to profit from electric and gas deregulation and other competitive purchasing opportunities, Cadence uses the Network to aggregate load information and create the custom request for proposals necessary to shop for the commodity supply. Cadence then reviews proposals from the various marketers, analyzes rate pricing option, and helps to negotiate the contractual terms. Throughout this process, Cadence acts as a consultant for the customer. Cadence does not take title to the commodity nor act as a broker for the buyer or seller.

[4] Under this service option, Cadence helps implement energy efficiency projects to realize further cost savings for its customers. Using the detailed data captured from the Network, Cadence can begin to identify high-cost facilities that cannot be corrected by better rates or more accurate billing. To identify the most likely targets for cost reduction, Cadence conducts internal benchmarking, drawing on internal data-mining techniques. Once it has identified the problem and likely solution, Cadence prepares proposals for national energy-efficiency projects and develop comprehensive strategies. Cadence develops the implementation plan, recommends the proposed application, and negotiates for project procurement. In this regard, Cadence acts as a project facilitator or overseer, rather than a contractors.

[5] *See Cinergy Corp.*, Holding Co. Act Release No. 26662 (February 7, 1997).

[6] Cinergy and NCE anticipate that they will meet their allocable shares of Cadence's financing needs through capital contributions or loans exempt under rules 45 and 52. In addition, Cadence may issue its securities to outside parties to finance its business in transactions exempt under rule 52. To the extent necessary, any Cinergy guarantees in respect to Cadence securities would be issued under the authority granted to Cinergy in Holding Co. Act Release No. 26984 (March 1, 1999). Likewise, any NCE guarantees in respect of Cadence securities would be issued under the authority granted to NCE in Holding Co. Act Release No. 27000 (April 7, 1999).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23962; 812–11716]

The Victory Portfolios, et al.; Notice of Application

August 23, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application

Applicants seeks to amend a prior order that permits non-money market series of a registered open-end management investment company to purchase shares of one or more of the money market series of such registered investment company by adding one registered open-end management investment company and one investment adviser as applicants.

Applicants

The Victory Funds (formerly known as The Society Funds), The Highmark Group, The Parkstone Group of Funds, The Conestoga Family of Funds, The AmSouth Funds (formerly known as The ASO Outlook Group), The Sessions Group, American Performance Funds, The Coventry Group, BB&T Mutual Funds Group (collectively, the ''Original Funds''); Society Asset Management, Inc., Union Bank of Californian, N.A. (formerly known as The Bank of California), First of America Investment Corporation, Meridian Investment Company, AmSouth Bank (formerly known as AmSouth Bank, N.A.), National Bank of Commerce, BancOklahoma Trust Company, AMR Investment Services, Inc., Boatmen's Trust Company, AMCORE Capital Management, Inc., and Branch Banking and Trust Company (collectively, the ''Original Advisers''); BISYS Fund Services Limited Partnership (formerly known as The Winsbury Company) (''BISYS''), BISYS Fund Services Ohio, Inc. (formerly known as The Winsbury

Service Corporation) (all of the above entities collectively, the ''Original Applicants''); BISYS Fund Services, Inc. (''BISYS Services''); Martindale Andres & Company, Inc. and 1st Source Bank (collectively, the ''First Additional Advisers''); Eureka Funds, Performance Funds Trust, Centura Funds, Inc., (collectively, the First Additional Funds''); Sanwa Bank California, Trustmark National Bank and Centura Bank (collectively, the ''Second Additional Adviser''); The Infinity Mutual Funds, Inc. (the ''New Fund'') and First American National Bank (the ''New Adviser'').

The Sessions Group, BISYS, BISYS Fund Services Ohio, Inc. and the First Additional Advisers are also referred to as the ''First Subsequent Applicants.'' BISYS, BISYS Services, the First Additional Funds, and the Second Additional Advisers are also referred to as the ''Second Subsequent Applicants.'' The Original Applicants, the First Subsequent Applicants, and the Second Subsequent Applicants are also referred to collectively as the ''Prior Applicants.'' BISYS, BISYS Fund Services Ohio, Inc., the New Fund, as the New Adviser are referred to collectively as the ''New Applicants.''

Filing Dates

The Application was filed on July 23, 1999.

Hearing or Notification of Hearing

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 20, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, of lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Charles H. Hire, Esq., Baker & Hostetler LLP, 65 East State Street—Suite 2100, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George L. Zornada, Branch Chief, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. On October 5, 1993, the Commission issued an order (the ''Original Order'') under sections 6(c) and 17(b) of the Act that exempted the Original Applicants from the provisions of sections 12(d)(1)(A) and 17(a) of the Act and that permitted, pursuant to rule 17d–1, certain joint transactions in accordance with section 17(d) and rule 17d–1.[1] The Original Order permitted: (i) The non-money market series of an Original Fund to utilize cash reserves that have not been invested in portfolio securities (''Uninvested Cash'') to purchase shares of one or more of the money market series of such Original Fund; and (ii) the sale of shares by the money market series of an Original Fund to the non-money market series of such Original Fund, and the purchase (or redemption) of their shares by the money market series of the Original Fund from the non-money market series of such Original Fund.

2. On May 20, 1997, the Commission issued an order that amended the Original Order (together with the Original Order, the ''First Amended Order''), by extending the relief granted in the Original Order to the First Subsequent Applicants.[2]

3. On September 15, 1998, the Commission issued an order that amended the Original Order for the second time (together with the First Amended Order, the ''Second Amended Order''), by extending the relief granted in the Original order to the Second Subsequent Applicants.[3] The Original Order, the First Amended Order and the Second Amended Order and referred to herein collectively as the ''Amended Order.''

4. The New Fund is an open-end management investment company registered under the Act and organized as a Maryland corporation. The New Fund currently offers (or proposes to offer) twenty-two series, four of which are money market funds, that are advised by the New Adviser. The New Adviser is not registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') in reliance upon the exclusion from the definition of investment adviser set forth in section 202(a)(11)(A) of the Advisers Act. BISYS, one of the Prior Applicants, is the principal underwriter, administrator and distributor for each of the series. BISYS Ohio, also one of the Prior Applicants, is the administrator and transfer and dividend disbursing agent for each of the series.

5. The New Applicants seek to have the exemptive relief granted under the Amended Order extend to include them so as to permit the permit the non-money market series of the New Fund which are advised by the New Adviser to utilize Uninvested Cash to purchase shares of one or more of the money market series of the New Fund which are advised by the New Adviser.[4] The New Applicants consent to the conditions set forth in the original application and agree to be bound by the terms and provisions of the Amended Order to the same extent as the Prior Applicants. The New Applicants believe that granting the requested order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22373 Filed 8–27–99; 8:45 am]

BILLING CODE 8010–01–M

[1] Investment Company Act Release Nos. 19695 (Sept. 9, 1993) (notice) and 19759 (Oct. 5, 1993) (order).

[2] Investment Company Act release Nos. 22636 (April 25, 1997)(notice) and 22677 (May 20, 1997) (order).

[3] Investment Company Act Release Nos. 23393 (August 18, 1998)(notice) and 23436 (September 15, 1998)(order).

[4] The requested relief also would extend to any other registered open-end management investment companies advised by the New Adviser or any person directly or indirectly controlling, controlled by, or under common control with the New Adviser, and for which BISYS or any person directly or indirectly controlling, controlled by, or under common control with BISYS, now or in the future serves as principal underwriter.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41767; File No. SR–CTA/CQ–99–02]

Consolidated Tape Association; Notice of Filing of Fifth Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan and the Fourth Charges Amendment to the Restated Consolidated Quotation Plan

August 19, 1999.

Pursuant to Rule 11Aa3–2 [1] of the Securities Exchange Act of 1934 (''Act''),[2] notice is hereby given that on August 2, 1999, the Consolidated Tape Association (''CTA'') and the Consolidated Quotation (''CQ'') Plan Participants (''Participants'') [3] filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') amendments to the Restated CTA Plan and CQ Plan.[4] The amendments propose (1) to modify the fees payable by vendors of the Network B market information in respect of nonprofessional subscriber services, (2) to introduce pay-for-use rates into the Network B rate schedules following a pilot test that commenced in February 1997, and (3) to grant each vendor of a pay-for-use service the ability to limit its monthly pay-for-use obligation for each of its customers that qualifies as a nonprofessional subscriber.

Pursuant to Rule 11Aa3–2(c)(1), the CTA and CQ Participants submitted this notice of proposed amendments to two effective national market system plans.[5] The Commission is publishing this notice to solicit comments from interested persons on the amendments.

[1] 17 CFR 240.11Aa3–2.

[2] 15 U.S.C. 78s(b)(1).

[3] The amendments were executed by each Participant in each of the Plans. The Participants include American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., National Association of Securities Dealers, Inc. New York Stock Exchange, Inc., Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc.

[4] The Communications Facilities charge was incorrectly stated on the Schedule of Fees submitted with the proposal. The charge remains $250 for each unit as approved on October 14, 1997 in Securities Exchange Act Rel. No. 39235, 62 FR 54886 (October 22, 1997). Telephone conversation between Kerry G. Baker, Director, Market Data Services, Nasdaq/AMEX, and Mignon McLemore, Attorney, Division of Market Regulation, Commission, August 19, 1999.

[5] The CTA and CQ Plans have been designated as effective transaction reporting plans pursuant to Exchange Act Rule 11Aa3–1(b).

I. Description and Purpose of the Amendments

A. Rule 11Aa3–2

1. Nonprofessional Subscriber Service Rates

The Participants under the Plans that make Network B last sale information and Network B quotation information available (the ''Network B Participants'') impose on vendors a monthly fee of $3.25 for each nonprofessional subscriber to whom the vendor provides a Network B market data display service. These amendments propose to reduce that monthly fee from $3.25 to $1.00 for each nonprofessional subscriber to whom a vendor provides a Network B display service during the month.

The objective of the proposed plan amendments is to encourage the proliferation of those services and the widespread dissemination of Network B market data. The Network B Participants also believe that reductions in the nonprofessional subscriber rates respond to the growing number of broker-dealers and vendors that wish to provide on-line services to their customers, which services may, for example, enable their customers to price portfolios with real-time information and to receive ''dynamically updated'' services, such as real-time ticker displays.

For the nonprofessional subscriber rates (rather than the much higher professional subscriber rates) to apply to any of its subscribers, a vendor must make certain that the subscriber qualifies as a nonprofessional subscriber,[6] subject to the same criteria that have applied since 1985, when the Network B Participants first established a reduced rate for nonprofessional subscribers.

Only those nonprofessional subscribers that actually gain access to at least one real-time Network B quote or price during the month will be charged the proposed fees by the Network B Participants.

2. Pay-for-Use Rates

Since February 1997, the Network B Participants have conducted a pilot program pursuant to which vendors, providing Network B market data display services to nonprofessional subscribers, have been afforded the following tiered usage schedule as an alternative to the flat $3.25 monthly rate the Network B Participants have historically imposed on nonprofessional subscribers.

1–50 quotes = $0.50 per month, per quote
51–250 quotes = $3.25 per month, per user
251 + quotes = $35.00 per month, per user

Based on its experience with the tiered usage schedule and their extensive consultation with vendors and member organizations, the Network B Participants are proposing to alter the tiered usage schedule and to make the altered fee structure part of the Network B rate schedule.

Under the altered rates, each vendor would pay:

i. three-quarters of one cent ($0.0075) per quote packet [7] for each of the first 20 million quote packets that it distributes during a month;

ii. one-half of one cent ($0.005) per quote packet for each of the next 20 million quote packets that it distributes during that month (*i.e.,* quote packets 20,000,001 through 40,000,000 million); and

iii. one-quarter of one cent ($0.0025) for every quote packet in excess of 40 million that it distributes during that month.

The Network B Participants believe that the proposed pay-for-use fees may motivate additional market data vendors and broker-dealers to provide pay-for-use services, thereby making real-time market data even more readily available to investors through those channels.

3. Interplay of Nonprofessional-Subscriber and Pay-for-Use Rates

The Network B Participants further propose to reduce the cost exposure of vendors and broker-dealers by permitting them to limit the amount due from each nonprofessional subscriber each month. The vendor and broker-dealers would be eligible to pay the lower of either (i) the aggregate pay-per-use fees that would apply to the subscriber's usage during the month or (ii) the flat monthly $1.00 nonprofessional subscriber fee. The Network B Participants propose to offer this flexibility to each subscriber that qualifies as a nonprofessional subscriber and that has agreed to the terms and

[6] A ''nonprofessional subscriber'' shall receive the information solely for his personal, non-business use. The subscriber shall not furnish the information to any other person. *See* NYSE and ASE Application and Agreement for the Privilege of Receiving Last Sale Information & Bond Last Sale Information as a Nonprofessional Subscriber, for the qualifications necessary to be classified as a nonprofessional subscriber.

[7] A *quote packet* refers to any data element, or all data elements, relating to a single issue. Last sale price, opening price, high price, low price, volume, net change, bid, offer, size, best bid and best offer all exemplify data elements. ''IBM'' exemplifies a single issue. An index value constitutes a single issue data element.

conditions that apply to the receipt of market information as a nonprofessional subscriber.

For ease of administration, the Network B Participants propose to allow each vendor and broker-dealer to apply the $1.00 fee for any month in which each nonprofessional subscriber retrieves 134 or more quote packets during the month, without regard to the marginal per-quote rate that the vendor or broker-dealer pays that month (*i.e.*, three-quarters, one-half or one-quarter cent per quote packet). In addition, each vendor may reassess each month to determine which fee is more economical, the per-quote fee or the nonprofessional subscriber fee.

* * * * *

This amendment furthers the objectives of the national market system regarding the dissemination of last sale information delineated in Sections 11A(a)(1)(C), 11A(a)(1)(D) and 11A(a)(3)(B) of the Act.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Participants have manifested their approval of the proposed amendments to the CTA and CQ Network B rate schedules by means of their execution of the amendments. The rate changes would become effective on the first day of the month that follows the month in which the Commission approves the proposed plan amendments.

D. Development and Implementation Phases

See Item I(C).

E. Analysis of Impact on Competition

The proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Network B Participants do not believe that the proposed plan amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance with Plans

In accordance with Section XII(b)(iii) of the CTA Plan and Section IX(b)(iii) of the CQ Plan, each of the Participants has approved the fee reductions.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

See Item I(A) above.

J. Method of Determination and Imposition, and Amount of Fees and Charges

See Item I(A) and the text of the amendments.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 11Aa3–1 (solely in its application to the amendments to the CTA Plan)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

See Item I(A).

G. Identification of Marketplace of Execution

III. Solicitation of Comments

Section 11A of the Act requires that the Commission assure fair competition among brokers and dealers and assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.[8] Another provision in this section authorizes the Commission to prescribe rules to assure that all persons may obtain this market data on terms that are ''not unreasonably discriminatory.''

Based on these standards, the Commission requests comment on whether the tiered fee structure applicable to users is unreasonably discriminatory.

1. The usage-based fee is structured as a fee per user with decreases for larger numbers of users. Will this tiered fee structure have an effect on competition among broker-dealers?

2. Will these volume discounts inure to the benefit of retail investors equally regardless of the broker-dealer they choose?

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CTA. All submissions should refer to the file number in the caption above and should be submitted by September 20, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22375 Filed 8–27–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78k–1(a)(1)(C)(i) and (ii).

[9] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 30, 1999.

A closed meeting will be held on Thursday, September 2, 1999, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain

staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, September 2, 1999, will be:

Institution and settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: August 25, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–22664 Filed 8–26–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41775; File No. SR–Amex–99–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Revise the Settlement Value Calculation Methodology for Nasdaq/NMS Component Stocks in the Morgan Stanley High Technology 35 Index

August 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 1999, the American Stock Exchange LLC (the ''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise the settlement value calculation methodology for Nasdaq National Market System (''Nasdaq/NMS'') component stocks in the Morgan Stanley High Technology 35 Index (''Index''). The proposal does not revise the Index in any other way.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise the settlement value calculation methodology for Nasdaq/NMS component stocks in the Index. Currently, the Index's settlement value is determined by using the regular way opening sale price for each of the Index's component stocks in its primary market on the last trading day prior to expiration.[3] The Exchange proposes to revise the settlement value calculation methodology by using the volume weighted average price for each Nasdaq/NMS listed Index component, as calculated during the first five minutes of trading immediately following the first reported trade for such component.[4]

[3] *See* Securities Exchange Act Release No 36283 (Sept. 26, 1995), 60 FR 51825 (Oct. 3, 1995) (order approving the Exchange's proposed rule change to list and trade options on the Index).

[4] If no other trades are executed in a Nasdaq/NMS listed Index component during the five minutes following the first reported trade, the Exchange will use the price of the first reported trade in calculating the settlement value for the Index. Telephone conversation between Michael L. Loftus, Attorney, Division of Market Regulation, Commission, and Scott G. Van Hatten, Legal Counsel, Derivative Securities, Exchange (August 17, 1999).

While investors in exchange-listed securities are able to receive executions at the specialist-determined opening price by entering a market-on-open order, investors in Nasdaq securities cannot be assured of transacting at a price equal to the first reported print. In some instances, the first reported price may be significantly different than the price at which investors receive execution. As a result, investors, market-makers, and the Index specialist cannot be sure that their hedges or offsets will converge to the settlement value for the Index. Moreover, in some cases the value of the hedge may differ significantly from the Index settlement value. This uncertainty adds to the cost of trading the Index options and makes them less desirable to trade.

While it may remain difficult to accomplish complete or perfect convergence using the proposed methodology, the volume weighted average price should provide a better opportunity for market participants to transact at a price near the settlement price used for the Index. This makes it less likely that there will be a significant difference between a market participant's hedge and the settlement value of the Index. For this reason, the Exchange is revising the settlement value calculation methodology for Nasdaq/NMS listed Index components.[5]

The Exchange proposes to calculate the Index's settlement value by using the volume weighted average price for all Nasdaq/NMS listed Index components, as calculated during the first five minutes of trading in such component. Once the first trade in a Nasdaq/NMS component is reported, that component's volume weighted average price is determined by: (i) Multiplying the number of shares traded (volume) by the price at which those shares traded (execution price) for each trade; (ii) aggregating these products; and (iii) dividing this sum by the total number of shares traded (total volume) during the five minute period immediately following the first reported trade.[6] For all other Index components

[5] The Exchange intends to submit to the Commission a separate, but similar, rule filing that revises the settlement value calculation methodology for other Exchange indexes by using volume weighted average prices for Nasdaq/NMS component securities in place of regular way opening sale prices. Telephone conversation between Michael L. Loftus, Attorney, Division of Market Regulation, Commission, and Scott G. Van Hatten, Legal Counsel, Derivative Securities, Exchange (August 17, 1999).

[6] The facilitate the prompt and accurate calculation of the Index's final settlement value, the volume weighted average price for all Nasdaq/NMS stocks included in the Index will be calculated by Nasdaq's ''Index Calculation Group'' and forwarded

not primarily listed on the Nasdaq/NMS (*i.e.*, those Index components having the Exchange or the New York Stock Exchange as their primary market), the Index's settlement value will continue to reflect the regular way opening sale prices reported on the primary market on the last trading day prior to expiration.

The settlement value calculation methodology currently used for Nasdaq/NMS components (''Old Methodology'') will continue to be used for the settlement of any option series still outstanding when Index option contracts based on the proposed settlement value calculation methodology (''New Methodology'') are introduced. Thereafter, any newly introduced Index option series will settle based on the New Methodology. Index option contracts based on the Old Methodology will be aggregated with those based on the New Methodology for purposes of determining compliance with position and exercise limits.[7] LEAPS® (Long Term Equity Anticipation Securities) still outstanding when the New Methodology is implemented will continue to settle based on the Old Methodology. Thereafter, any newly introduced LEAPS® will settle based on the New Methodology.

The Exchange believes that the use of the volume weighted average price to calculate the Index's settlement value is appropriate and should result in a settlement value that better reflects the markets in Nasdaq/NMS securities. The Exchange proposes no other changes to the Index, and will continue to maintain the Index in accordance with the applicable criteria set forth in the original order approving the Index for options trading.[8] The Exchange will disseminate an information circular to its members to inform them of the change to the Index's settlement value calculation methodology. The circular will detail the method by which contracts settling under the Old Methodology will be phased out and those settling based on the New Methodology will be introduced.

electronically to Amex's ''Index Calculation Group.''

[7] As set forth in Exchange Rules 904C and 905C, the current position and exercise limits for options on the Index are 15,000 contracts on the same side of the market. The Exchange notes, however, that these position and exercise limits may be revised upwards in connection with an Exchange proposal to increase the position and exercise limits for narrow-based index options. *See* Securities Exchange Act Release No. 40756 (Dec. 7, 1998), 63 FR 68809 (Dec. 14, 1998).

[8] *See* Note 3 *supra*.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) by its terms, does not become operative for 30 days after July 29, 1999, the date of filing; [11] and the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with the text of the proposal, at least five business days prior to the filing date; the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if its appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] Although the proposed rule change is considered effective upon filing, it may not become operative until at least August 28, 1999, which is 30 days after the date of filing (July 29, 1999).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–99–28 and should be submitted by September 20, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22428 Filed 8–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41770; File No. SR–EMCC–99–09]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Year 2000 Policies

August 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 19, 1999, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items II and II below, which items have been prepared primarily by EMCC. The Commission is publishing this notice

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, EMCC will not activate any new or additional participant accounts or provide new services to participants after November 1, 1999, and until reasonably practicable in January 2000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change provides that, EMCC will not activate any new or additional participants accounts or provide new services to participants after November 1, 1999, and until reasonably practicable in January, 2000. Among other things, EMCC announced in its August 6, 1999, Important Notice that after November 1, 1999, and for the remainder of the calendar year, EMCC will not: (1) permit new participants to utilize EMCC's services; (2) allow current participants to utilize new FMCC services; and (3) assign additional participant numbers to current participants.

EMCC's Rule 2 provides in part that:

the Corporation may deny an application to become a Member or to use one or more additional services of the Corporation upon a determination by the Corporation that the Corporation does not have adequate personnel, space, data processing capacity or other operational capability at such time to perform its services for the applicant or Member without impairing the ability of the Corporation to provide services for its existing Settling Members, to assure the prompt, accurate and orderly processing and settlement of securities transactions or to otherwise carry out its functions; provided, however, that any such applications which are denied pursuant to this paragraph shall be approved as promptly as the capabilities of the Corporation permit.

EMCC believes that continuing to activate numerous new or additional participant accounts or to provide new services to participants after November 1st could potentially be disruptive to the rest of its Year 2000 efforts. Specifically, EMCC will be devoting a great deal of resources to confirming the Year 2000 readiness of its systems and applications in November of 1999. Additionally, EMCC would like to ensure that it has enough time to deal with any unanticipated issues that arise before the end of the calendar year.

EMCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[3] which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

EMCC advised members of the Year 2000 policy modifications in an Important Notice, dated August 6, 1999. No written comments relating to the Important Notice or proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[4] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with this obligation because the proposed modifications to EMCC's Year 2000 policies will permit EMCC sufficient time before year end to complete its Year 2000 preparations. As a result, EMCC should be able to continue to provide prompt and accurate clearance and settlement of securities transactions before, on, and after Year 2000 without interruption.

EMCC requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing because such approval will allow EMCC to better prepare for a smooth Year 2000 transition.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of EMCC. All submissions should refer to the File No. SR–EMCC–99–09 and should be submitted by September 20, 1999.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–EMCC–99–09) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22376 Filed 8–27–99; 8:45 am]

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[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41773; File No. SR–MSRB–99–7]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to an Amendment to Rule G–16 on Periodic Compliance Examinations

August 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 13, 1999, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change to Rule G–16, on periodic compliance examination (hereinafter referred to as the ''proposed rule change''). The proposed rule change will revise the 24-month examination in Rule G–16 to a two calendar year requirement. Below is the text of the proposed rule change:[3]

Rule G–16. Periodic Compliance Examination

At least once each [twenty-four months] *two calendar years,* each broker, dealer and municipal securities dealer shall be examined in accordance with Section 15B(c)(7) of the Act to determine, at a minimum, whether such broker, dealer or municipal securities dealer and its associated persons are in compliance with all applicable rules of the Board and all applicable provisions of the Act and rules and regulations of the Commission thereunder.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Section 15B(c)(7)(A)[4] of the Act provides that periodic examinations of dealers for compliance with Board rules are to be conducted by the National Association of Securities Dealers, Inc. (''NASD'') with respect to securities firms and by the appropriate federal bank regulatory agencies with respect to bank dealers. Rule G–16 permits such examinations to be combined with other periodic examinations of securities firms and bank dealers in order to avoid unnecessary regulatory duplication and undue regulatory burdens for such firms and bank dealers.

By letter dated April 28, 1999, NASD Regulation, Inc., (''NASDR'') requested that the Board revise Rule G–16. The letter states that because of NASDR's efforts to coordinate examination schedules, NASDR believes there is a need for a change in Rule G–16. NASDR requested that the Board change the 24-month requirement in Rule G–16 to a two calendar year requirement.

NASDR states that the requirement in Rule G–16 that municipal securities examinations commence within 24-months of the previous examination takes precedence over all examinations when coordinating examination schedules. NASDR uses the ''field work start date'' of a firm's prior municipal securities examination to calculate the 24-month period for the purposes of Rule G–16. Apply this methodology, NASDR identifies all municipal securities examinations required in a given calendar year. A determination is then made as to whether the identified firms are also scheduled for a routine cycle examination during the same year.

If a routine cycle examination is required of a firm that is subject to a municipal inspection, the routine and municipal examinations are combined. If a routine cycle examination is not required, a separate ''off-cycle'' municipal examination may have to be conducted on-site. Whenever a municipal securities examination is accelerated, the due date for commencement of a subsequent examination is moved to an earlier period; increasingly the first quarter. NASDR states that this hampers both current and future examination planning and coordination. NASDR states that without the rule change it may be necessary to remove municipal securities examinations from the coordinated examination programs.

The Board discussed the proposed rule change with representatives from the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of the Comptroller of the Currency (''the bank regulators'') The bank regulators also examine dealers for compliance with Board rules pursuant to Rule G–16. All of the bank regulators responded favorably to the NASDR's request, stating that the requested change would help bank regulators better coordinate examinations.

Coordination of on-site examinations eliminates unnecessary regulatory duplication and is less intrusive for dealers without negatively impacting investor protection. A formal Memorandum of Understanding among the North American Securities Administrators Association, Inc., SEC, NASDR and other securities industry self-regulatory organizations reflects the joint commitment to coordinated examinations. The Board believes that the proposed rule change will permit more effective coordination of examinations with other regulatory and self-regulatory organizations. It will also provide operating flexibility in planning and scheduling NASDR's and the bank regulators' overall examination program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] $New language is italicized and deletions are in brackets.

[4] 15 U.S.C. 78o–4(c)(7)(A).

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–99–7 and should be submitted by September 20, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22429 Filed 8–27–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41774; File No. SR–PCX–99–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Automated Opening Rotations

August 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 1999, the Pacific Exchange Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 4, 1999, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt a new procedure for handling customer orders and executing option transactions during the opening rotation. This rule change is intended to automate the current procedures for opening rotations, except for those situations in which the opening rotation will continue to be conducted manually. The test of the proposed rule change follows. New text is italicized.

¶5073—Trading Rotations

Rule 6.64*(a)*—No additional change.

(b) Automated Opening Rotation. The Exchange may employ automated opening rotations in designated series of options. All option series that are eligible for participation in the Automatic Opening Rotation will be opened automatically. Conversely, if an option series is not opened automatically pursuant to this Rule, then that series must be opened manually pursuant to applicable Exchange Rules. Automated Opening Rotations, when held, will be based upon the following procedures.

(1) Establishing a Market for the Opening Rotation: Prior to the opening rotation in a particular option series, the Order Book Official will determine whether there are any manual orders being represented in the trading crowd to be executed during the opening rotation. In doing so, the Order Book Official will call for bids and offers from the trading crowd once the underlying security has opened. The trading crowd may determine that the bids and offers then being displayed on the overhead screens are accurate, or alternatively, may modify those bids and offers by public outcry.

(2) Designating Series that are Not Eligible for the Automated Opening Rotation. The Order Book Official must identify, prior to the opening, all option series that are not eligible for the automated opening rotation. These series include:

(A) Series for which there are no market or marketable limit orders in the POETS system.

(B) Series for which there are one or more manual orders being represented in the trading crowd that are likely to be executed during the opening rotation, as determined by an Order Book Official.

(C) Series for which one or more members of the trading crowd has reasonably requested that a manual opening rotation be conducted. Two Floor Officials may deny member requests for manual opening rotations in the absence of reasonable justification for doing so. Prior to the opening, the OBO, in conjunction with the members of the trading crowd, will set for each option issue a number of contracts that constitutes an imbalance threshold, i.e., a specific number of option contracts to buy in excess of the number of contracts to sell or a specific number of contracts to sell in excess of the number of contracts to buy. The POETS system will not automatically open any series with an imbalance exceeding the threshold for that issue.

(3) Automated Opening Rotations. Series Eligible for the Automated Opening Rotation will be opened automatically based on the following principles and procedures:

(A) The POETS system will determine a single price at which a particular option series will be opened, as provided in Commentary .03, below.

(B) Orders in the system will maintain priority over Market Maker bids and offers. Orders in the system will be matched up with one another, if possible, before they are executed against the accounts of Market Makers participating on the Automatic Execution System.

(C) If there is an imbalance in the number of contacts to buy or sell at the opening, then the imbalance will be cleaned up by the Market Makers who are participating on the Automatic Execution System. Accordingly, each Market Maker will be assigned a number of option contracts for execution until the imbalance has been exhausted. The maximum number of option contracts that may be assigned to a Market Maker is established pursuant to Rule 6.87. When the Auto-Ex System assigns the imbalance of contracts to Market Makers, the assignments will be made in the same manner in which option contracts are allocated to Market Makers who are participating on the Auto-Ex System pursuant to Rule 6.87. The maximum number of contracts assigned will be the same as the number assigned under the Auto-Ex procedures established pursuant to Rule 6.87.

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange further clarifies the operation of automated openings, provides rule text related to the new procedures, and justifies its request for accelerated approval. *See* letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Michael A. Walinskas, Associate Director, Commission, dated August 3, 1999 (''Amendment No. 1'').

Commentary:

.01–.02—No Change.

.03—Determining the Opening Price of a Single Price Opening. The appropriate price to be used in a single price opening on the Exchange is determined in the following manner: Once the trading crowd has established the bid and offering prices in a particular series, the Order Book Official will identify the number of contracts available to sell at the previously-established bid price and the number of contracts available to buy at the previously-established offering price.

(a) If the number of contracts available to sell at the bid price is greater than the number available to buy at the offering price, then the opening price will be the bid price.

(b) If the number of contracts available to buy at the offering price is greater than the number available to sell at the bid price, then the opening price will be the offering price.

(c) If eligible market and marketable limit orders can be completely satisfied by trading against other orders in the Limit Order Book, then the market may open between the established bid and ask prices, with no Market Maker participation. For example, if the market is 2–2¼, with an order in the Limit Order Book to sell 20 contracts at 2⅛, and there is a market order to buy 5 contracts, the single price open, will occur with 5 contracts trading at 2–⅛. The opening price will always be on or between the established bid and offer.

(d) If there is no trading increment available at the half-way point between the bid and offering prices e.g., as in the case of a market of bid, 2 1/16 asked), then the opening price will be established at the price closest to the last sale price of option contracts in that series.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction. The Exchange is proposing to adopt a new procedure to facilitate trading of option contracts during the opening rotation.[4] Opening rotations are held promptly following the opening of the underlying security on the principal market where it is traded.[5] Opening rotations are conducted by an Order Book Official (''OBO''), who is an Exchange employee.[6] The PCX rules on opening rotations apply to both index and equity option contracts.[7]

Curent Procedures for Opening Rotations. Prior to the opening, firms and floor brokers may enter customer orders into the Limit Order Book (''Book'') for handling by the OBO to facilitate a single price opening. It is the responsibility of the floor broker to make the OBO aware of orders that may be expected to trade on the opening.[8]

In conducting the opening rotation, the OBO first asks the trading crowd whether the quotes generated by Auto-Quote[9] are consistent with the trading crowd's markets. At that time, the market makers have an opportunity to adjust the Auto-Quote parameters, including the volatility settings. If one or more members of the trading crowd determines to improve a market, they may do so. Alternatively, the trading crowd or LMM may establish a market without the use of the Auto-Quote function, and in that case, the OBO will request bids and offers from members of the trading crowd and enter the quotes manually.

Once the best bid and ask prices have been established, each option series,[10] is opened as follows: First, if there are no orders in the Book and no orders being manually represented in the trading crowd of which the OBO is aware, the series is flagged ''open,'' free trading is commenced in that series and the Auto-Ex System[11] is flagged on in that series. Second, if there are one or more market or marketable limit orders in the Book, or one or more orders being manually represented in the trading crowd and designed for trading at the opening rotation, the OBO will call for a market and attempt to determine from floor brokers the sizes and prices of those orders.[12] The OBO will then ask the floor brokers in the crowd what customers orders they are holding to be executed at the opening and, when possible, match all customers orders at the appropriate price.[13] If imbalances occur, the OBO asks the market makers if they can clean up the imbalance at the established price and, if not, establish

[4] The Exchange intends to continue to employ the current (manual) procedures for closing rotations.

[5] *See* PCX Rule 6.64, Comment. .01(a).

[6] *See* PCX Rules 6.51 and 6.64.

[7] *See* PCX Rule 7.10.

[8] *See* OFPA A–1.

[9] The Auto-Quote feature of POETS allows market quotes to be generated systematically, using programmed theoretical models and variable criteria that are entered through the Auto-Quote function by Book staff. *See* Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FF 2466 (January 24, 1990).

[10] The term ''series'' means all option contracts of the same class (puts or calls) having the same expiration date and exercise price, and the same unit of trading. In general, when a new issue is first listed and traded on the Exchange, there will be 24 series available for trading. These include series that are in-, at- and out-of-the money, for both puts and calls, and for each of four expiration months. As the price of the underlying stock moves and new series are added, the number of series outstanding at any given time can be greater than 100. For example, on July 1, 1999, the number of series outstanding in options on America Online, Inc. was 104.

[11] The Auto-Ex system permits eligible market or marketable limit orders sent from member firms to be executed automatically at the displayed bid or offering price. Participating market makers are designated as the contra side to each Auto-Ex order. Participating market makers are assigned by Auto-Ex on a rotating basis, with the first market maker selected at random from the list of signed-on market makers. Auto-Ex preserves Book Priority in all options. Automatic executions through Auto-Ex are currently available for public customer orders of 20 contracts or less in most option issues traded on the Exchange (however, the maximum size of orders eligible for Auto-Ex is ten contracts in a small number of issues).

[12] *See* OFPA C–1. If the OBO believes that the response to the request for markets is insufficient either as to price or size, the OBO may request markets from each market maker who did not respond and/or may call for supplemental market makers. *See* OFPA C–1.

[13] *See* OFPA C–1. The appropriate price that is used in a single price opening is determined in the following manner: Once the bid and offering prices in a particular series have been determined, the OBO will identify the number of contracts available to sell at the bid price and the number of contracts available to buy at the offering price. If the number available to sell at the bid price is greater than the number available to buy at the offering price, then the opening price will be the bid price, and vice versa. If the number of contracts to sell is equal to the number to buy, then the opening price will be established halfway between the bid and offering price. However, if there is no trading increment available at the half-way point between the bid and offering prices (*e.g.*, as in the case of a market 2 bid, 2 1/16 asked), then the opening price will be established at the price closest to the last sale price of option contracts of that series.

If market and marketable limit orders can be completely satisfied by trading against other orders in the Book, then the market may open between the established bid and ask prices, with no market maker participation. For example, if the market is 2–2¼, with an order in the Book to sell 20 contracts at 2⅛, and a market order to buy 5 contracts, the single price opening will occur with 5 contracts trading at 2⅛ (public customer to public customer). The market quote at the opening will then be 2–2⅛.

where the orders can be filled.[14] Market makers who respond with bids or offers are entitled to participate based on existing rules on priority of bids and offers.[15]

While conducting the opening rotation, the OBO will attempt to match all public customer orders at a single price.[16] If there is an imbalance of public customer orders in the Book, the OBO will seek market maker and firm participation to establish the opening price.[17] The OBO may give market orders that are entitled to participate at the opening[18] priority over limit orders at the same opening price on the Book.

Generally, each option issue traded at a given trading post is to be opened in the same order in which opening transactions are reported in the underlying securities.[19] In opening a particular option issue, the OBO will ordinarily first open one or more series of a given class having the nearest expiration, and then proceed to series of options having the next most distant expiration, and so forth, until all series in that issue have been opened.[20] Unless the Options Floor Trading Committee (''OFTC'') provides otherwise, the OBO will determine whether to open puts first or calls first, but may alternate the opening of put series and call series, or may open all series of one type (puts or calls) before opening series of the other type, depending upon market conditions.[21]

New Automated Opening Rotation (''AOR'') Process. The Exchange is proposing to adopt a new procedure that will allow the OBO to establish electronically a single price opening for executing eligible market and marketable limit orders in the POETS system. In the event of an imbalance, any remaining orders in the system that are eligible to be executed will be assigned to market makers participating on the Auto-Ex System. The new process involves three basic steps: first, the markets are established; second, the opening rotation is automatically processed for the majority of series; and finally, any series was manual orders or complication is opened manually *i.e.,* pursuant to the current procedures for opening rotations as described above.[22]

More specifically, under the new AOR process, opening rotations on the PCX will occur in the following manner: Prior to the opening, the OBO will determine whether there are any orders in the trading crowd to be executed at the opening.[23] Once the underlying security has opened, the OBO will request from the trading crowd bids and offers in the specific option issue. The trading crowd may determine that the posted bids and offers are accurate, or alternatively, may request by public outcry that certain quotes be modified.[24]

Once the bid and asking price in each series has been ascertained, the OBO and AOR system will identify all series that are eligible for the AOR and that can be opened immediately, and will also identify all series that are not eligible for the AOR. Those that are not eligible for the AOR must be opened manually. Procedures for automatic and manual opening are discussed below.

1. *Automatic Opening*

The Exchange intends to use the AOR in all issues traded on the PCX. The Exchange also expects that particular series will only be designated for manual openings (*i.e.,* ''de-selected'' from the automated procedure) in unusual circumstances. The Exchange does not anticipate any situations where all series of a given issue will be opened manually when the AOR is operational. The Exchange also does not anticipate that any particular series will be de-selected and opened manually on a routine or regular basis.[25]

To prepare for an automated opening, the AOR will first exclude series for which there are no market or marketable limit orders in the system,[26] as well as all series deemed ineligible for AOR. The series eligible for AOR will be promptly opened in accordance with the following principles and procedures. First, the system will determine a single price at which the series will be opened.[27] Second, orders in the system will maintain priority over market maker bids and offers, so orders in the system will be matched up with one another, if possible, before executing against the accounts of market makers. Third, if there is an imbalance in the number of contracts to buy or sell at the opening,[28] then the imbalance will be ''cleaned up'' by the market makers who are participating on the Auto-Ex system, *i.e.,* the system will assign a set number of contracts (generally 20) to each participating market marker until the imbalance has been exhausted.

Currently, under the manual process, the imbalance will be cleaned up based on auction market principles: Any member can bid or offer for some (or all) of the imbalance at the established price. If there are no bids or offers for the imbalance, the OBO will allocate the imbalance to the members of the trading crowd. Under the proposal, however, the imbalance will be allocated to the members of the trading crowd using the Exchange's existing Auto-Ex system. When the Auto-Ex System assigns the imbalance of contracts to market makers, the assignments will be made in the same manner in which option contracts are allocated to market makers who are participating on the Auto-Ex System pursuant to PCX Rule 6.87. The maximum number of contracts assigned will be the same as the number assigned under the Auto-Ex procedures established pursuant to PCX Rule 6.87.[29]

The number of contracts allocated to each market will depend on the Auto-Ex size guarantee established for that particular issue. If that number is 20 (which currently applies to most issues currently traded on the PCX), then based on the example, two market

[14] *See* OFPA C–1. During the opening rotation, OBOs are permitted to match market orders at the opening price, but floor brokers who present these orders to the OBO must remain on the trading floor during the rotation (or must designate another floor broker to represent those market orders in his or her place). *See* OFPA A–1.

[15] *See* PCX Rules 6.73 and 6.75.

[16] *See* PCX Rule 6.75(c)(2).

[17] *See* PCX Rule 6.75(c)(2).

[18] The OFTC is required to establish a cut-off-time for orders entitled to participate in the opening. *See* PCX Rule 6.75(c)(1).

[19] *See* PCX Rule 6.64, Comment. .01(a).

[20] *See* PCX Rule 6.64, Comment. .01(a).

[21] *See* PCX Rule 6.64, Comment. .01(a).

[22] *See Current Procedures for Opening Rotations, supra.*

[23] These may include, for example, orders that cannot be represented in POETS, such as contingency orders, broker/dealer orders, orders designated ''not held,'' orders for spreads or straddlers, combination orders, all-or-none orders, as well as any order the floor broker determines to represent manually. As noted above, it is the floor brokers' obligation to notify the OBO of such orders prior to the opening. *See* note 8, *supra.*

[24] Prior to an automated opening, the members of the trading crowd must establish a bid and offer for each series in a given issue. This occurs basically as follows: The OBO will first display a bid price and an offering price for a particular series. (These prices will have been established either by the Auto-Quote feature of POETS or by manual process, *i.e.,* a member or members of the trading crowd will vocalize bids and offers that a Market Quote Terminal Operator will enter into the system and display on the overhead screen.) The OBO will then ask the crowd if the displayed prices are ''all right'' (or other words to that effect). There will then be a short window period when the displayed prices may be adjusted. While the trading crowd is establishing the market, any member may vocalize a bid or offer that improves the market, and the OBO will be required to update the market accordingly. *See* Amendment No. 1.

[25] *See* Amendment No. 1.

[26] There can be single price opening unless there are orders eligible for trading being represented.

[27] The formula that the Exchange intends to use for establishing a single price opening in automated openings is set forth above. *See* note 13, *supra.*

[28] For example, if there are market or marketable limit orders collectively representing interest to buy 500 contracts and to sell 100 contracts at a single price, the imbalance will be 400 contracts. As discussed below, an imbalance in an amount greater than a previously-established threshold level will render the series ineligible for the AOR.

[29] *See* Amendment No. 1.

markers will each receive automatic executions of 20 contracts against their trading accounts at the opening price. Under the proposal, whatever the opening price, the system will guarantee that all contracts constituting an imbalance will be cleaned by the Auto-Ex System.[30]

Under the proposal, orders may participate in the automated opening rotation regardless of size. An order will not be prohibited from participating in the automated opening rotation on the ground that the order is ineligible from being executed over the Auto-Ex System due to its size.[31]

2. Manual Opening

As noted above, all series that are not eligible for AOR will have been identified before any series are opened automatically. The OBO can designate a series as ineligible for AOR by deliberately not entering a quote into the system for that series. Series not eligible for the AOR include series for which: (a) there are orders requiring special handling; [32] (b) there is an imbalance of contracts exceeding an established threshold; or (c) the trading crowd and OBO determine that the series should be opened manually.

a. Manual Orders Requiring Special Handling

A series will be deemed ineligible for AOR if a broker in the crowd is holding an order that is likely to be executed during the opening. In general, manual orders to buy at relatively low prices or to sell at relatively high prices generally will not likely participate in the opening.[33]

b. Imbalance of Contracts Exceeding Established Thresholds

The Exchange will establish, for each option issue, a number of contracts that constitutes an imbalance threshold. This number will attempt to reflect the relative liquidity in the trading crowd and size of the trading crowd.[34] The AOR will calculate imbalance on a series-by series basis and flag those series for which the imbalance threshold has been exceeded. The threshold level will vary by issue and by trading crowd. For example, assume the established market is 5–5¼ and there are orders for 100 contracts to buy at 5¼ and orders for 500 contracts to sell at 5. Since the imbalance is 400 contracts, the threshold will be exceeded unless the established level is greater than 400. If the established level is greater than 400, the opening will occur under AOR. If the threshold is exceeded there will be a manual opening.

c. Crowd's Request for Manual Opening

A member or members of a trading crowd may request a particular series to be opened manually, and the OBO will honor reasonable requests. These requests may typically be made in a series with a large amount of open interest or for other reasons.[35] Although the Exchange does not anticipate problems resulting from such requests, in the event of a dispute the matter would be resolved by floor officials.[36]

Obligations and Eligibility of Market Makers. Market makers may participate in the AOR if they are otherwise eligible to participate on the Auto-Ex system during the trading day pursuant to PCX Rule 6.87. Generally, to participate on Auto-Ex, a market maker must be present in the trading crowd and that trading crowd must be included within that market maker's primary appointment zone. If there is inadequate participation in a particular option issue, two floor officials may require market makers who are members of the trading crowd, as defined in subsection (6) of PCX Rule 6.87, to log on to Auto-Ex, while present in the trading crowd, absent reasonable justification or excuse for non-participation. The Exchange proposes that these rules will apply to market maker participation in the AOR with respect to contracts allocated to market makers during the opening rotation process.

Surveillance of Market Maker Procedures. The market makers participating on AOR will be required to price the contracts fairly, in a manner consistent with their obligations under PCX Rule 6.37. In conjunction with the implementation of the AOR system, the Exchange will publish a regulatory bulletin to remind market makers of their obligation to set Auto-Quote fairly. The Exchange believes that a number of factors, including scrutiny by customers and firms representing customer orders, will ensure that market makers adjust the Auto-Quote values consistent with their obligation. Moreover, market makers are required to vocalize their changes to Auto-Quote, which allows OBO's to oversee the markets and alerts market makers who may want to improve the markets. In addition, if an OBO notices any unusual activity in the setting of Auto-Quote values, the OBO must fill out an OBO Unusual Activity Report which will be investigated by the Exchange. Finally, the Exchange's Auto-Quote has an audit trail log that details every quote change resulting from the use of Auto-Quote. This audit trail report can be studied in the event of any concerns with the way the Auto-Quote values were established for AOR.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section

[30] *Id.*

[31] *Id.*

[32] The following types of orders are ineligible to participate in the automated opening rotation: (1) broker/dealer orders; (2) contingency orders; (3) spreads; (4) straddles; (5) not held orders; and (6) combination orders. These types of orders are defined in PCX Rule 6.62. If any of these types of orders are being represented in the trading crowd and are likely to participate in the opening based on price, a manual opening rotation will be held in that series. *See* Amendment No. 1.

Market orders and plain limit orders (*i.e.*, limit orders with no contingencies) are eligible to participate in the automated opening rotation. *See* PCX Rule 6.75(c)(1); OFPA A–1 (eligibility of market orders); and Amendment No. 1.

[33] If there is an order in the crowd that is ineligible to participate in the automated opening rotation due to its type, and, based on its price, that order is likely to participate in the opening (*e.g.*, there is a broker/dealer order to buy puts at 5¼ and the established market is 4⅞–5), the opening rotation will be conducted manually for that series. On the other hand, if the market were 5½–5⅞, the 5¼ bid would not likely participate in the opening, so it will not be required that a manual process be held. (A manual opening is required under proposed PCX Rule 6.64(b)(2)(B) for a series if there are one or more manual orders in the trading crowd ''that are likely to be executed during the opening rotation, as determined by the Order Book Official.'') However, in the second example above, the broker/dealer order to buy puts at 5¼ will be eligible to be executed in free trading immediately following the opening of that series. *See* Amendment No. 1.

[34] The Exchange anticipates that the number of contracts constituting an imbalance threshold will be established by the OBO in consultation with the trading crowd. The Options Floor Trading Committee will monitor and supervise the general process of designating imbalance thresholds on the trading floor. The Exchange believes that it is necessary to provide a reasonable amount of flexibility in the process of establishing particular thresholds, and further that there is little risk of abuse in providing flexibility because if low thresholds are established by a trading crowd, the result will merely be that certain series will have to be opened manually. Although the Exchange does not anticipate that there will be any problems in this area, the Exchange will study the process during the first six months of use of the new system, and if rule changes appear necessary, the Exchange will file a rule filing with the Commission to effect the changes necessary. *See* Amendment No. 1.

[35] The Exchange represents that it does not anticipate that this provision will be used with any regularity, but instead, should be used under extraordinary circumstances. For example, there may be a series that has a very large amount of open interest, and the underlying stock is involved in a takeover or merger. The crowd may prefer to have a particular series opened manually because the proposed takeover price is equal to the strike price of that series. In this exceptional case, the use of the open outcry system would be preferable to the use of the auto-ex system because the allocation of contracts would more likely be consistent with the trading strategies of the members of the trading crow. *See* Amendment No. 1.

[36] *See* PCX Constitution, art. IV, sec. 8. On the PCX, floor officials are members of the OFTC who are responsible for the general supervision of the dealings of members on the Options Floor.

6(b)[37] of the Act, in general, and furthers the objectives of Section 6(b)(5),[38] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to protect investors and the public interest, to remove impediments to and to perfect the mechanism of a free and open market and a national market system. Specifically, the proposal is designed to facilitate the execution of orders at the opening by providing a means of establishing a single price opening. This will expedite the opening of option issues on the Exchange, which will serve all market participants. It will eliminate problems associated with later openings, including the elimination of backlogs of unexecuted orders that can result when opening rotations are conducted entirely manually.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–99–24 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22427 Filed 8–27–99; 8:45 am]

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[37] 15 U.S.C. 78f(b).

[38] 15 U.S.C. 78f(b)(5).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41776; File No. SR–Phlx–99–07]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change Requiring Off-Floor Traders for which the Phlx is the Designated Examining Authority to Successfully Complete the General Securities Representative Examination Series 7

August 20, 1999.

On March 15, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change would amend Phlx Rule 604, Registration and Termination of Registered Representatives, to require successful completion of the General Securities Representative Examination Series 7 (''Series 7 Exam'') by persons who are associated with members or participant organizations[3] for which the Exchange is the Designated Examining Authority (''DEA'')[4] and who trade off the floor of the Exchange (''off-floor traders'').[5]

On April 6, 1999, the Exchange filed Amendment No. 1 with the Commission, removing a description of professional traders from the filing.[6] On April 12, 1999, the Exchange filed Amendment No. 2 with the Commission, making technical changes to the proposed rule.[7] On August 18, 1999, the Exchange filed Amendment No. 3 with the Commission, which revised the rule language.[8] Notice of the proposed rule change, as amended, together with the substance of the proposal, was published in the **Federal Register**.[9] The Commission received 22 comment letters from 21 commenters on the filing.[10] This order approves the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''participant organizations'' refers to foreign currency options participant organizations, which includes foreign currency options participants firms and foreign currency options participant corporations. Phlx Rules 13–16.

[4] Pursuant to Section 17(d) of the Exchange Act, 15 U.S.C. 78q(d), the Commission may ''allocate among self-regulatory organizations the authority to adopt rules with respect to matters as to which, in the absence of such allocations, such self-regulatory organizations share authority under this title.'' The DEA is the self-regulatory organization (''SRO'') that has the responsibility for examining a broker or dealer member for compliance with the federal securities laws and the rules of the SRO.

[5] Under the proposed rule change, Phlx Rule 604 would be retitled as Registration and Termination of Registered Persons.

[6] *See* Letter from Richard S. Rudolph, Legal Counsel, Phlx, to Karl Varner, Special Counsel, Division of Market Regulation (''Division''), SEC (April 6, 1999).

[7] *See* Letter from Richard S. Rudolph, Legal Counsel, Phlx, to Karl Varner, Special Counsel, Division, SEC (April 12, 1999).

[8] *See* Letter from Richard S. Rudolph, Legal Counsel, Phlx, to Karl Varner, Special Counsel, Division, SEC (Aug. 18, 1999). Amendment No. 3 revised the proposed rule language for paragraph (e) of Phlx Rule 604. (Amendment No. 3 was inadvertently designated as Amendment No. 2 by the Phlx).

[9] Securities Exchange Act Release No. 41306 (April 16, 1999), 64 FR 22665 (April 27, 1999).

[10] *See* Letter from Donald M. Nisonoff, Senior Counsel, Proskauer Rose LLP to Secretary, SEC (May 14, 1999) (''Nisonoff Letter''); E-mail from Chris Pheil to Rule-Comments at OSI (May 3, 1999); E-mail from Victor Shakerchi to Rule-Comments at OSI (May 3, 1999); Letter from H.R. Roger Menear III to Secretary, SEC (May 7, 1999); Letter from Brian Dalinsky to Secretary, SEC (May 7, 1999); Letter from Vladimir M. Slavinsky to Secretary, SEC (May 7, 1999); Letter from Joseph H. Phoenix to Secretary, SEC (May 7, 1999); Letter from Aleksandr E. Shapiro to Secretary, SEC (May 7, 1999); Letter from Dan Dimitrigevic to Secretary, SEC (May 7, 1999); Letter from Nelson R. Davis, Jr. to Secretary, SEC (May 10, 1999), E-mail from Sean von Tagen to Rule-Comments at OSI (May 12, 1999); E-mail from Dan Laycock to Rule-Comments at OSI (May

I. Background and Summary

Phlx Rule 604 specifies the qualification requirements for persons conducting a public business or duties customarily performed by registered representatives. Specifically, these associated persons are required to register on Form U–4, Uniform Application for Securities Industry Registration or Transfer, and to pass the Series 7 Exam and maintain an effective Series 7 Full Registration/General Securities Representative registration.[11] In addition, Phlx Rule 604 specifies the qualification requirements for associated persons of a member or participant organization for which the Exchange is the DEA when these persons are not registered representatives, but are compensated directly or indirectly for trading securities for the firm's account.[12] Currently, this class of associated persons, which includes the Phlx off-floor traders who are the subject of the proposed rule change, are only required to file a Form U–4.

The Exchange proposes to amend Phlx Rule 604 to require successful completion of the Series 7 Exam by persons who are associated with members or participant organizations for which the Exchange is the DEA and who trade off the floor of the Exchange. The Exchange believes those persons to whom the new examination requirement would apply primarily are associated with limited liability companies (''LLC'') for the purpose of trading securities off the floor of the Exchange for the firm's account. According to the Exchange, these off-floor traders generally become members of an LLC to avail themselves of good faith margin [13] provided through the LLC's Joint Back Office [14] agreement with its clearing agent.

The proposal would require all currently registered associated persons who trade off the floor of the Exchange to register to take the Series 7 Exam within 30 days of the Exchange's notice to its membership of this requirement, and to successfully complete the Series 7 Exam within six months of the date of notice by the Exchange.[15] Those associated persons covered by the rule change will be required to notify the Exchange promptly that they have registered to take the Series 7 Exam. Persons who become associated with member organizations or participant organizations after the date of notice of this requirement must successfully complete the Series 7 Exam prior to conducting securities trading activities for which the examination is mandated.

II. Summary of Comments and the Exchange's Response

All 21 commenters expressed concerns about the proposal. Twenty commenters stated that, if the Exchange were to require an examination for off-floor traders, the Limited Representative-Equity Trader Examination (''Series 55 Exam''), which qualifies individuals to trade equity and convertible debt securities on a principal or agency basis, or another unspecified examination, would be more appropriate for those traders.[16] Some of these commenters argued that the Series 55 Exam is more relevant for off-floor traders. Two commenters added that the proposal will discourage trading off the floor of the Exchange without any regulatory benefit, because the Series 7 Exam covers a wide range of products and activities that typically are not engaged in by off-floor traders.[17] One of these commenters also objected to the proposal because in his view: (1) Off-floor traders associated with LLCs have limited interaction with traders at other firms and no contact with customers; (2) adequate controls exist now to limit any possible impact of trading off the floor of the Exchange;[18] and (3) the proposal is an indirect attempt to regulate credit used by the off-floor traders.[19] Another commenter stated that the proposal discriminates in favor of certain parties and against others because the Series 7 Exam is not required of floor traders and others conducting similar businesses.[20]

The Phlx in its response letter stated that the Series 7 Exam, rather than the Series 55 Exam, is appropriate for a logistical reason: To qualify to take the Series 55 Exam, an individual must first pass either the Series 7 Exam or the Corporate Securities Limited Representative Qualification Examination (''Series 62 Exam'').[21] The Phlx believes that it is more practical to require the Series 7 Exam only, rather than both the Series 7 Exam and the Series 55 Exam. The Phlx also responded that the Series 55 Exam is not suitable because it is used to qualify individuals to trade equity and convertible debt securities on a principal or agency basis, with an emphasis on Nasdaq market maker activities and obligations. Moreover, the Exchange noted that the Series 55 Exam was designed with the assumption that the participant will already have been thoroughly tested on the critical areas in the Series 7 Exam (such as compliance with federal and state laws and industry regulations, characteristics of different investment products, investment risks, and principal factors affecting securities markets and prices for individual securities).

4, 1999; E-mail from Barry Pozmantier to Rule-Comments at OSI (May 6, 1999) (''Pozmantier E-mail''); E-mail from David Kolpak to Rule-Comments at OSI (May 18, 1999); E-mail from David Wacker to Rule-Comments at OSI (May 16, 1999); E-mail from Jerry Wickey to Rule-Comments at OSI (May 16, 1999); E-mail from John Hodges to Rule-Comments at OSI (May 16, 1999); E-mail from Alan Goldstein to Rule-Comments at OSI (May 16, 1999; E-mail from Peter Kulbokas to Rule-Comments at OSI (May 20, 1999); Letter from P.L. Blackburn, Office Manager, Bright Trading, to Secretary, SEC (May 10, 1999) (''Blackburn Letter''); Letter from Ron Owens to SEC (May 15, 1999); Memorandum to File No. SR–PHLX–99–07 (June 1, 1999) (telephone conference with Donald Nisonoff and Saul Cohen, Proskauer Rose, LLP).

[11] *See* Phlx Rule 604(a).

[12] Phlx Rule 604(d) specifies that every person who is compensated directly or indirectly by a member or participant organization for which the Exchange is the DEA for the solicitation or handling of business in securities, including trading securities for the account of the member or participant organization, whether such securities are those dealt in on the Exchange or those dealt in over-the-counter, who is not otherwise required to register with the Exchange, must file Form U–4, Uniform Application for Securities Industry Registration or Transfer, with the Exchange, *See also* Securities Exchange Act Release No. 36515 (November 27, 1995), 60 FR 62119 (December 4, 1995) (File No. SR–Phlx–95–58) (order approving addition of paragraph (d) to Phlx Rule 604 to require associated persons to file Form U–4.).

[13] Good faith margin is the amount of margin which a creditor would require in exercising sound credit judgment. *See* 12 CFR 220.2 (''Regulation T'').

[14] *See* 12 CFR 220.7(c) (noting that in a broker-dealer credit account, a creditor may finance transactions of any of its owners if the creditor is a clearing and servicing broker or dealer owned jointly or individually by other creditors).

[15] According to the Exchange, as of June 30, 1999, the proposal would affect approximately 1,777 persons associated with about 15 firms out of a total of 8,240 firms that have the ability to direct orders to the Phlx by using floor broker members to expedite trades. Telephone conversation between Richard S. Rudolph, Legal Counsel, Phlx, and Joseph Morra, Attorney, Division, SEC (July 28, 1999).

[16] *See, e.g.,* Nisonoff Letter, Pozmantier E-mail.

[17] *See* Nisonoff Letter at 2 and Blackburn Letter.

[18] *See* Nisonoff Letter at 2.

[19] *See supra* n.10, Nisonoff Telephone Conference.

[20] *See* Pozmantier E-mail.

[21] *See* Letter from Richard S. Rudolph, Legal Counsel, Phlx, to Karl Varner, Esquire, Division, SEC (June 9, 1999). The Series 55 Exam was developed by the National Association of Securities Dealers, Inc. (''NASD'') in response to problems identified in connection with the administrative proceeding against the NASD, *National Association of Securities Dealers, Inc.,* Securities Exchange Act Release No. 37538 (Aug. 8, 1996), 62 S.E.C. Docket 1346 (Order Instituting Public Proceedings Pursuant To Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions). NASD rules generally require a person to have successfully completed the Series 7 Exam before taking the Series 55. *See* Securities Exchange Act Release No. 39516 (January 2, 1998), 63 FR 1520 (January 9, 1998) (order approving Series 55 Exam).

The Phlx also stated that other SROs such as the New York Stock Exchange, Inc. (''NYSE''), the American Stock Exchange, Inc. (''Amex''), and the Chicago Stock Exchange, Inc. (''CHX'') require that securities traders pass the Series 7 Exam.[22] The Phlx noted that an associated person of a Phlx member would be required to take the Series 7 Exam if the firm or that associated person decided to become a member of another SRO.

III. Discussion

Under Section 19(b) of the Act,[23] the Commission is required to approve a proposed rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the SRO. Under the Act, SROs are assigned rulemaking and enforcement responsibilities for regulating the securities industry for the protection of investors and for related purposes. A key requirement for SROs is to assure that associated persons[24] of their members satisfy prescribed standards of training, experience, and competence as a condition to membership.[25] The Commission finds that the Exchange's proposal requiring those off-floor traders of Phlx members or participant organizations for which the Phlx is the DEA to successfully complete the Series 7 Exam is consistent with the requirements of the Section 6 of Act, and particularly Sections 6(b)(5)[26] and 6(c)(3) (A) and (B)[27] thereunder, for the reasons discussed below.

A review of the Act and its legislative history, as well as subsequent amendments, reveals that one of the Act's most important objectives is to maintain the integrity and competency of securities industry personnel. To this end, Congress has authorized the Commission to comprehensively regulate the securities activities of member firms and their associated persons by, among other things, ensuring that all natural persons associated with a broker-dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.[28] Moreover, Section 15(b)(7)(C) of the Act[29] provides that the Commission may rely on the registered securities associations and national securities exchanges to ''require registered brokers an dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange.'' To effectuate the goals of Section 15(b)(7) of the Act,[30] the Commission in 1993 adopted Rule 15b7–1, which prohibits registered broker-dealers from effecting any transaction in, or inducing the purpose or sale of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards (including but not limited to submitting and maintaining all required forms, paying all required fees and passing any required examinations) established by the rules of any national securities exchange of which such broker or dealer is a member.[31]

In addition, Section 6(c)(3)(A) of the Act[32] provides that a national securities exchange may deny membership to, or condition the membership of, a registered broker-dealer if any natural persons associated with such broker or dealer do not meet such standards of training, experience and competence as are prescribed by the rules of the exchange.[33] Also, under Section 6(c)(3)(B) of the Act,[34] a National securities exchange may bar a natural person from becoming associated with a member if the person does not meet the exchange's standards of training, experience, or competence, or if the person has engaged and there is a reasonable likelihood the person will engage again in acts or practices inconsistent with just and equitable principles of trade. Under these statutory provisions, the various national securities exchanges, including the Phlx, are empowered to implement rules establishing the prerequisites to qualify and approve persons associated with members to engage in securities activities.

The Act's legislative history also demonstrates the strong concerns of Congress regarding the expertise and competency of persons associated with the brokerage industry. One of the primary objectives of Congress in amending the Act in 1964 was ''to strengthen the standards of entrance into the securities business, enlarge the scope of self-regulation, and strengthen Commission disciplinary controls over brokers, dealers, and their employees.''[35] The Senate Report further noted that ''[o]ne of the basic purposes of the Securities Exchange Act of 1934 is to regulate the conduct of broker-dealers and persons associated with them, both through direct Commission controls and through self-regulation by industry groups, with appropriate Commission oversight.''[36] The Senate Report emphasized the importance of screening the integrity and competence of those persons involved in the securities industry.[37]

The Commission finds that the Exchange's proposal to require associated persons of members to pass the Series 7 Exam is a well-established and accepted practice in the securities industry and is directly related to one of the most important objectives of the Exchange Act—maintaining the integrity and competency of securities industry personnel.

Off-floor traders of the Phlx are participants in the securities industry. The persons who will be subject to the new rule are associated persons of the member firm.[38] They effect their trading activities in the firm's proprietary account. As associated persons of

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[22] *See* NYSE Rule 345; Amex Rule 341; NASD Conduct Rule 1030; CHX Article VI, Rule 3.

[23] 15 U.S.C. 78s(b)(2).

[24] As defined in Section 3(a)(21) of the Act, an associated person of a member is ''any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member.'' 15 U.S.C. 78c(a)(21). The off-floor traders covered by the Exchange's proposed rule change are associated persons of the member firm.

[25] *See* 15 U.S.C. 78f(c)(3)(B).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78f(c)(3) (A) and (B).

[28] *See* Section 15(b)(7) of the Act, 15 U.S.C. 78*o*(b)(7).

[29] 15 U.S.C. 78*o*(b)(7)(C).

[30] 15 U.S.C. 78*o*(b)(7).

[31] 17 CFR 240.15b7–1.

[32] 15 U.S.C. 78f(c)(3)(B).

[33] Under Section 15(b)(8) of the Act, all registered brokers or dealers must be members of an SRO—either a securities association or a national securities exchange. 15 U.S.C. 78*o*(b)(8).

[34] 15 U.S.C. 78f(c)(3)(B).

[35] S. Rep. No. 379, 88th Cong., 1st Sess. 1 (1963) (''Senate Report'').

[36] *Id*. at 38.

[37] The Senate Report noted the following:

The findings of the Special Study show that—because of the complex nature of the securities markets, the reliance which the investing public necessarily places upon the competence and character of professionals in those markets, and the responsibilities which are assumed—the existing ease of entry for inexperienced and unqualified persons subjects the investing public to undue hazards and unnecessarily complicates the task of regulation.

Id. at 43–44. In this regard, the national securities exchanges and associations were specifically charged to enhance their regulation of associated persons: ''Development and administration of such standards is a matter which is peculiarly appropriate for self-regulation under Commission supervision; and the establishment of such requirements, in conjunction with the requirement of membership in a regulatory body, should significantly simplify regulation and improve investor protection.'' *Id*. at 44.

[38] *See supra* n. 24.

members of the Phlx, they are required to comply with the Commission's and the Exchange's rules pertaining to broker-dealers and their associated personnel, including qualification requirements established to assure that they maintain the degree of integrity and competency expected of securities industry personnel. The off-floor traders are already subject to registration requirements, including the requirement to file a Form U–4. Requiring these off-floor traders to pass the Series 7 Exam will further the objectives of Sections 6(c)(3) (A) and (B)[39] of the Act, which are intended to assure that associated persons are sufficiently familiar with Commission and SRO requirements and procedures when they are closely connected to the securities industry.

The proper education of securities industry personnel is but one component of a carefully considered statutory and regulatory framework designed to promote the integrity of securities markets and protect investors. According to the Exchange, these off-floor traders generally become members of an LLC to avail themselves of benefits available to associated persons, *e.g.*, Joint Back Office agreements, and not to others. The off-floor traders' benefits of associated person status and the ability to trade in the firm's account also entail obligations under the securities laws. By successfully completing the Series 7 Exam, these off-floor traders should develop a greater understanding of securities products, risks, and regulations appropriate for associated persons.

Moreover, the proposed rule change is consistent with the provisions of Section 6(b)(5)[40] of the Act requiring, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Series 7 Exam tests for proficiency in a broad range of securities matters, including anti-fraud and anti-manipulation regulation. Without proper training, these associated persons may inadvertently engage in transactions in the firm's account that are improper under the federal securities laws and regulations or rules of the SROs. In the Commission's opinion, the proposed rule revision satisfies the objectives of Section 6(b)(5)[41] of the Act because, by satisfactorily completing the Series 7 Exam, these off-floor traders who trade on a proprietary basis will gain a greater understanding of the regulations, procedures and principles governing the securities industry.

Most commenters suggested that the Phlx instead should require off-floor traders to pass the Series 55 Exam or another examination specifically tailored to the activities of these off-floor traders, rather than the Series 7 Exam. The Commission believes that, although the Series 7 Exam does not focus on trading off the floor of the Exchange, the exam covers a reasonably broad range of applicable laws, rules, regulations, and industry practices that are pertinent to most associated persons. In essence, the Series 7 Exam is the industry standard for persons who want to be affiliated with a broker-dealer and trade securities. In addition, typically a person must pass the Series 7 Exam to qualify to take the Series 55 Exam, which is a specialized registration category.[42] The Series 55 Exam focuses on activities, automated execution and trading systems, and trade reporting obligations geared toward the Nasdaq market maker.[43] In contrast, the Series 7 Exam is broader in scope, used principally to qualify persons seeking registration as general securities representatives. It tests for appropriate levels of knowledge and expertise regarding securities laws and regulations, characteristics of different investment products, investment risk, and principal factors affecting securities markets and prices for individual securities. The Commission agrees with the Phlx that the Series 7 Exam is the more appropriate test for off-floor traders.

One commenter remarked that the proposal discriminates against off-floor traders because traders on the floor of the Phlx do not have to take the Series 7 Exam. The Commission, however, finds that the proposal does not unfairly discriminate against off-floor traders because traders on the floor of the Exchange must pass the Series 7 Exam, the Series 7A examination,[44] or an options proficiency examination for Registered Options Traders (''ROT'') administered by the Phlx Department of Regulatory Services.[45] Another commenter suggested that the Exchange's proposal would not apply to firms engaged in proprietary trading, even though such firms' employees are routinely permitted to trade large firm proprietary positions far exceeding the position that an LLC member would take using his or her own capital. The Commission finds that the proposal, however, is intended to apply to all off-floor traders of members or participant organizations who trade for the member firm's proprietary account when the Phlx is the DEA, and not just those associated with LLCs.[46] In addition, as noted above, all traders on the floor of the Exchange who trade for the member firm's proprietary account must successfully complete the Series 7 Exam, the Series 7A examination, or a Phlx options proficiency examination, depending on which is applicable.

With respect to one commenter's statement that adequate controls exist to limit any possible impact of trading off the floor of the Exchange, the Commission finds that the proposal will properly supplement existing controls to ensure that off-floor traders and other associated persons of members are appropriately qualified to become associated with a member. By successfully completing the Series 7 Exam, off-floor traders of the Phlx should hve a sufficient level of knowledge of securities laws and regulations, as well as investment products and risks, that is suitable to their role as associated persons of a member organization and who trade on a proprietary basis in the firm's account.

In one commenter's view, the proposal is an indirect attempt to regulate credit used by off-floor traders. The Commission does not consider the proposal to be an indirect attempt to impose greater credit restrictions on off-floor traders, but an effort to assure a level of understanding and competency regarding securities matters by

[39] 15 U.S.C. 78f(c)(3) (A) and (B).

[40] 15 U.S.C. 78f(b)(5).

[41] *Id.*

[42] Securities Exchange Act Release No. 39516 (January 2, 1998), 63 FR 1520 (January 9, 1998) (order approving Series 55 Examination).

[43] *See* Letter from Richard S. Rudolph, Counsel, Phlx, to Karl Varner, Esquire, Division, SEC, at pp. 1–2 (June 9, 1999).

[44] *See* Phlx Rule 604. The Series 7A examination is a module of the Series 7 Exam developed to test the knowledge of the relevant securities laws and Exchange Rules required of a member who conducts a public business that is limited to accepting orders from professional customers for execution on the trading floor.

[45] *See* Telephone conversation between Richard S. Rudolph, Legal Counsel, Phlx, and Karl Varner, Attorney, Division, SEC (Aug. 17, 1999). An ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade options for his own account. *See* Phlx Rule 1014(b). *See also* Phlx Rule 901(c)(1), which specifies that the Exchange may bar a person from becoming associated with a member or condition the association of a person with a member organization if the person does not successfully complete such written proficiency examinations as required by the Exchange to enable it to examine and verify the applicant's qualifications to function in one or more of the capacities applied for.

[46] *See* Telephone conversation between Richard S. Rudolph, Legal Counsel, Phlx, and Karl Varner, Attorney, Division, SEC (Aug. 9, 1999).

associated persons of broker-dealers. In fact, the Phlx rule change may benefit a member firm because its off-floor traders will be comprehensively trained and tested on fundamental securities matters.

Finally, the Commission finds that the proposal will bring the Exchange's qualification requirements in line with those of other securities exchanges by adding testing requirements for off-floor traders and other associated persons of members who are not covered by the current qualification requirements for floor traders. The Series 7 Exam was adopted as an industry-wide qualification examination in 1974. In addition to mandating the exam for general securities representatives, other securities exchanges currently require off-floor traders to pass the Series 7 Exam.[47] The Commission notes that other SROs such as the NYSE, Amex, and CHX already require securities traders who do not conduct a public business to pass the Series 7 Exam.[48] For example, NYSE Rule 345 requires ''securities traders'' engaged in the purchase or sale of securities for the account of their employer and who do not transact business with the public to pass the Series 7 Exam. Amex Rule 341 parallels this rule. In addition, Interpretation and Policy .02 to CHX Rule 3 establishes a Series 7 examination requirement for associated persons who execute, make trading decisions, or otherwise engage in proprietary or agency trading off the floor of the exchange. The examination requirement for off-floor traders at the Phlx will enhance the consistency of exam requirements across the exchanges and prevent off-floor traders from associating with members of the Phlx solely to avoid the examination requirements of other SROs.

The Commission also finds good cause for approving proposed Amendment No. 3 prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. Amendment No. 3 conforms the proposal to similar rules of other self regulatory organizations.[49] For these reasons, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Phlx. All submissions should refer to File No. SR–Phlx–99–07 and should be submitted by September 20, 1999.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the Act, and in particular, with Sections 6(b)(5) and 6(c)(3) (A) and (B).[50]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[51] that the proposal, SR–Phlx–99–07, as amended, be and hereby is approved.[52]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[53]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22426 Filed 8–27–99; 8:45 am]

BILLING CODE 8010–01–M

[47] *See* NYSE Rule 345; Amex Rule 341; NASD Conduct Rule 1030; CHX Article VI, Rule 3. On June 1, 1999, the Pacific Exchange, Inc. (''PCX'') filed a similar proposed rule change with the Commission to require that qualified off-floor traders for which the PCX is the designated examining authority successfully complete the Series 7 Exam. *See* Securities Exchange Act Release No. 41555 (June 24, 1999), 64 FR 36063 (July 2, 1999) (SR–PCX–99–16).

[48] *Id.*

[49] *Id.*

[50] 15 U.S.C. 78f(b)(5), 15 U.S.C. 78f(c)(3) (A) and (B).

[51] 15 U.S.C. 78s(b)(2).

[52] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[53] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Modifications to the Disability Determination Procedures; Disability Claims Process Redesign Prototype

AGENCY: Social Security Administration.

ACTION: Notice of a prototype involving modifications to the disability determination procedures.

SUMMARY: The Social Security Administration (SSA) is announcing a prototype involving a combination of modifications to the disability determination process. Before proceeding to national implementation, we expect that this prototype will provide a body of information about what impact these modifications may have on agency operations, notice and other procedures, as well as the resulting quality and timeliness of decisions for the public.

DATES: Selection of cases to be included in the prototype will begin on or about October 1, 1999 and is expected to be concluded on or about December 31, 2001. If the Agency decides to continue the prototype beyond this date, another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Harry Pippin, Social Security Administration, Office of Disability, Disability Process Redesign Staff, 6401 Security Boulevard, Baltimore, Maryland, 21235–6401, 410–965–9203.

SUPPLEMENTARY INFORMATION: Current rules codified at 20 CFR 404.906 and 416.1406 authorize us to test modifications to the disability determination procedures individually or in any combination. Under this authority, several tests have been conducted. We are now announcing a prototype that incorporates multiple modifications to the disability determination procedures employed by State Disability Determination Services (DDS) which have been shown to be effective in earlier tests. Specifically, the prototype incorporates a series of changes that improve the initial disability determination process by: providing greater decisional authority to the disability examiner and more effective use of the expertise of the medical consultant; ensuring appropriate development and explanation of key issues; increasing opportunities for claimant interaction with the decision maker before a determination is made; and simplifying the appeals process by eliminating the reconsideration step. Focusing initially on 10 states enables us to further refine the process and learn more about potential operational impacts before moving to national implementation. This strategy allows us to put the complete process together and ensure that the changes meet our goal of improved service to disability applicants.

Use of an Adjudication Officer authorized under 20 CFR 404.906 and 416.1406, will not be included in the prototype. However, along with the prototype, we will incorporate several initiatives to improve the hearings process, including administrative efficiencies designed to streamline case processing; structural changes in the management organization of hearings offices; improvements in automation and data collection; and implementation of a ''national workflow model'' that combines pre-hearing activities, a standardized pre-hearing conference, and processing-time benchmarks for various tasks.

The prototype will be conducted in 10 states. For DDS branches listed here under Group I, all Social Security and Supplemental Security Income disability applicants will participate in the Prototype—with the exception of Social Security disability claims filed for purposes of Medicare entitlement only. In States listed under Group II, only those applicants whose disability claims are processed by the listed branch of the State DDS will participate. On a national basis, approximately 20 percent of applicants for disability benefits will participate in the prototype .

Group I

State of Alabama
- Department of Education, Disability Determination Services, 2545 Rocky Ridge Lane, Birmingham, AL 35216
- Department of Education, Disability Determination Services, 2000 Old Bayfront Drive, Mobile, AL 36652

State of Alaska
- Division of Vocational Rehabilitation, Disability Determination Unit, 619 East Ship Creek Avenue, Suite 305, Anchorage, AK 99501

State of Colorado
- Department of Human Services, Division of Disability Determination, 2530 South Parker Road, Suite 500, Aurora, CO 80014–1641

State of Louisiana
- Department of Social Services, Office of Family Support, Disability Determination Services, 445 North 12th Street, Baton Rouge, LA 70802
- Department of Social Services, Office of Family Support, Disability Determination Services, 5905 Florida Blvd, Suite 3, Baton Rouge, LA 70806
- Department of Social Services, Office of Family Support, Disability Determination Services, 2920 Knight Street, Suite 232, Shreveport, LA 71105
- Department of Social Services, Disability Determination Services, Suite 301, 3510 North Causeway Blvd., Metairie, LA 70002

State of Michigan
- Department of Social Services, Disability Determination Services, 608 W Allegan Street, Third Floor, Lansing, MI 48933
- Department of Social Services, Disability Determination Services, MI Plaza Building, Tenth Floor, 1200 Sixth Street, Detroit, MI 48226
- Department of Social Services, Disability Determination Services, 315 E Front Street, Traverse City, MI 49684
- Department of Social Services, Disability Determination Services, 151 South Rose Street, Kalamazoo, MI 49007–4715

State of Missouri
- Division of Vocational Rehabilitation, Dept of Elementary & Secondary Education, Section of Disability Determinations, 3024 West Truman Blvd., Jefferson City, MO 65109–0525
- Division of Vocational Rehabilitation, Dept of Elementary & Secondary Education, Section of Disability Determinations, 1500 B. Southridge Drive, Jefferson City, MO 65109
- Division of Vocational Rehabilitation, Dept of Elementary & Secondary Education, Section of Disability Determinations, 1845 Borman Court, Suite 200, St. Louis, MO 63146
- Division of Vocational Rehabilitation, Dept of Elementary & Secondary Education, Section of Disability Determinations, 4040 Seven Hills Drive, Florissant, MO 63033
- Division of Vocational Rehabilitation, Dept of Elementary & Secondary Education, Section of Disability Determinations, 8500 East Bannister Road, Kansas City, MO 64134
- Division of Vocational Rehabilitation, Dept of Elementary & Secondary Education, Section of Disability Determinations, 3014 Blattner Drive, Cape Girardeau, MO 63701
- Division of Vocational Rehabilitation, Dept of Elementary & Secondary Education, Section of Disability Determinations, 2530 I. South Campbell, Springfield, MO 65807

State of New Hampshire
- Division of Adult Learning and Rehabilitation, Disability Determination Services, State Dept of Education Building JB, 78 Regional Drive, Concord, NH 033301

State of Pennsylvania
- Bureau of Disability Determination, Room 200-Central Operations, 1171 South Camerson Street, Harrisburg, PA 17104–2594
- Bureau of Disability Determination, 264 Highland Park Blvd., Wilkes-Barre, PA 18702
- Bureau of Disability Determination, 351 Harvey Avenue, Greensburg, PA 15605

Group II

State of California
- Department of Social Services, Disability and Adult Programs Division, 3435 Wilshire Boulevard, Los Angeles, CA 90010

State of New York
- Division of Disability Determinations, 99 Washington Avenue, Room 1239, Albany, NY 12260
- Division of Disability Determinations, 22 Cortlandt Street, 5th Floor, New York, NY 10007–3107

Dated: August 24, 1999.

Sue C. Davis,

Director, Disability Process Redesign Team.

[FR Doc. 99–22421 Filed 8–27–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice #3100]

Advisory Committee on Labor Diplomacy; Notice of Meeting

The Advisory Committee on Labor Diplomacy (ACLD) will hold its inaugural meeting from 9:30 a.m. to 4:00 p.m. on September 17, 1999, in Room 1107, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520. Committee Chairman Thomas Donahue, former President of the AFL–CIO, will chair the meeting.

The ACLD is comprised of prominent persons with expertise in the area of international labor policy and labor diplomacy. The ACLD will advise the Secretary of State and the President on the resources and policies necessary to implement labor diplomacy programs efficiently, effectively and in a manner that ensures U.S. leadership before the international community in promoting the objectives and ideals of U.S. labor policies now and in the 21st century. The ACLD will make recommendations on how to strengthen the Department of State's ability to respond to the many challenges facing the United States and the federal government in international labor matters. These challenges include the protection of worker rights, the elimination of exploitative child labor, and the prevention of abusive working conditions.

The agenda for the September 17 meeting includes: (1) Committee organizational and administrative issues; (2) review of the State Department's labor diplomacy efforts and their relevance to other federal agency efforts, especially those of the U.S. Department of Labor; and (3) discussion of current international labor issues and their impact on labor diplomacy needs.

Members of the public are welcome to attend the meeting as seating capacity allows. As access to the Department of State is controlled, persons wishing to attend the meeting must be pre-cleared by calling or faxing the following information, by close of business September 14, to ACLD Executive Secretary Mark Simonoff at (202) 647-4327 or fax (202) 647–0431 or Jake Aller at (202) 647–3664 or email AllerJC @ state.gov: name; company or organization affiliation (if any); date of birth; and social security number. Pre-cleared persons should use the 23rd Street entrance to the State Department and have a driver's license with photo, a passport, a U.S. Government ID or other valid photo identification.

Members of the public may, if they wish, submit a brief statement to the Committee in writing. Those wishing further information should contact Mr. Simonoff or Mr. Aller at the phone and fax numbers provided above.

Dated: August 24, 1999.

Leslie Gerson,

Acting Assistant Secretary, Bureau of Democracy, Human Rights and Labor, U.S. Department of State.

[FR Doc. 99–22445 Filed 8–27–99; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice No. 3085]

Proposed UNIDROIT Convention on International Equipment Finance and a Protocol on Aircraft Transactions; Meeting Notices

AGENCY: Department of State.

ACTION: Notice: Meetings on Cross-Border Insolvency.

SUMMARY: The Study Group on Cross-Border Insolvency of the Secretary of State's Advisory Committee on Private International Law will hold two meetings, the first on September 16, 1999 in New York City and the second on November 20, 1999 in Houston, Texas. The topic will be developments in cross-border insolvency laws and procedures affecting commercial entities and proposed international initiatives.

AGENDA: The agenda, subject to available time, will include a review of current developments in this field, including the status of legislation pending in Congress on procedural aspects of cross-border insolvency cases. The principle focus will be examination of possible legal approaches concerning reform of substantive as well as procedural bankruptcy laws, which could be the basis of future international efforts to prepare model legislative provisions, guidelines or even at some point a treaty system. The focus will be on reform and uses of bankruptcy law regimes as a positive factor in assisting all states, including developing countries and countries in transition, to strengthen economic systems through more effective recycling or preservation of economic assets of distressed commercial enterprises. The impacts on systemic business and financial systems will be considered.

These discussions will, inter alia, assist in preparation of possible U.S. positions as various international fora, including the United Nations Commission on International trade Law (UNCITRAL) which will hold a meeting of its Working Group on Cross-Border Insolvency starting December 6, 1999. In addition, advice will be sought on insolvency issues within the context of negotiation at UNCITRAL of a draft treaty regime for accounts receivable financing, and at UNIDROIT on a draft treaty regime for international secured interests in mobile equipment. Finally, the effect of the proposed Hague Conference convention on jurisdiction, recognition and enforcement of foreign court judgments on insolvency proceedings, orders and judgments will be considered.

Attendance

The meetings are open to the public up to the capacity of the meeting rooms. The first meeting will be at 10:00 am–4:00 pm on September 16, 1999 at the New York City office of Goodwin, Procter & Hoar, 599 Lexington Ave., 40th floor; the second meeting will be at 10:00 am–4:00 pm on November 20, 1999 at the Houston office of Fulbright & Jaworski, 1301 McKinney St., 49th floor. Members of the public wishing to attend should contact either Cynthia Vitello at (617) 570–1445, fax 523–1231, email dvitello@gph.com., or Rosie Gonzales at (202) 776–8420, fax 776–8482 or email at pildb@his.com.

For copies of relevant documents on the above topics, please contact Ms. Gonzales at the Department of State, Office of Legal Adviser at the above numbers. For additional information on the international organizations or processes involved, contact Harold Burman at (202) 776–8421, fax 776–8482.

Harold S. Burman,

Executive Director, Secretary of State's Advisory Committee on Private International Law, United States Department of State.

[FR Doc. 99–22444 Filed 8–27–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 1999), FR 64, page 29404–29405].

DATES: Comments must be submitted on or before September 29, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Rotocraft External-Load Operator Certificate Application.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0044.

Form(s): FAA Form 8710–4.

Affected Public: An estimated 400 individual airmen, state and local governments and businesses.

Abstract: 14 CFR Part 133, Rotocraft External-Load Operations, was adopted to establish certification and operating rules governing nonpassenger-carrying rotocraft external-load operations conducted for compensation or hire.

Estimated Annual Burden Hours: 3,268 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and

Budget, 725—17th Street, NW., Washington, DC 20503, FAA Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 23, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–22432 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration, (FAA), DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 1999, [FR 64, page 29404–29405].

DATES: Comments must be submitted on or before September 29, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Explosives Detection System Certification Testing.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0577.

Form(s): N/A.

Affected Public: Manufacturers of explosive detection systems.

Abstract: Pub. L. 101–604 requires the Administrator of the Federal Aviation Administration to certify explosives detection systems, pursuant to protocols developed outside the agency, prior to mandating their use. The information required is necessary for the FAA to perform the certification testing on systems submitted by manufacturers.

Estimated Annual Burden Hours: 775 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 23, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–22433 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–30]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 5, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independent Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 25, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions For Exemption

Docket No.: 29536.

Petitioner: Astral Aviation, Inc. dba Skyway Airlines.

Section of the FAR Affected: 14 CFR 121.407(d) and 121.409(d).

Description of Relief Sought: To permit Skyway Airlines to conduct low altitude windshear flight training for 24 pilots in an Embraer EMB–145 simulator until such time that the Fairchild Dornier DO328–300 simulator is available.

[FR Doc. 99–22431 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Use Only, Impose Only and Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Meadows Field Airport, Bakersfield, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to use only, impose only and impose and use revenue from a PFC at Meadows Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 29, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA, 90009. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Raymond C. Bishop, Director of Airports, Meadows Field Airport, 1401 Skyway Drive, Suite 200 Bakersfield, CA 93308. Air carriers and foreign air carriers may submit copies of written comments previously provided to the county of Kern under section 158.23 Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor Standards Section, Airports Division, P.O. Box 92007, WPC, Los Angeles, CA 90009, Telephone: (310) 725–3621. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use only, impose only and impose and use the revenue from a PFC at Meadows Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On July 23, 1999, the FAA determined that the application to use only, impose only and impose and use the revenue from a PFC submitted by the county of Kern was not substantially complete within the requirements of section 158.25 of Part 158. The following items are required to complete the application:

The impose authority for the Construct an Aircraft Rescue and Fire Fighting (ARFF) Station project was expired on June 1, 1998. Reconsult with the carriers on this project as a new impose and use project, or delete this ARFF project from the application. The country of Kern has not submitted supplemental information to complete this application. The FAA will approve or disapprove the application, in whole or in part, not later than October 22, 1999.

The following is a brief overview of the application:

Level of the proposed PCF: $3.00.

Proposed charge effective date: January 1, 2000.

Proposed charge expiration date: May 1, 2002.

Total Estimated PFC Revenue: $829,933.

Brief description of the proposed projects:

Use only:

Construct an Aircraft Rescue and Fire Fighting (ARFF) Station.

Impose only:

Land Acquisition for Airport Expansion.

Impose and Use:

Planning and Design of New Terminal and Apron/Master Plan Design and Install Touchdown and Centerline Lights for Runway 30R–12L Install Midfield and Rollout Runway Visual Range (RVR) sensors Class or classes of air carriers which the public agency has requested not be required to collect PCFs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Meadows Field Airport Administration Office.

Issued in Hawthorne, California, on August 10, 1999.

Peter T. Melia,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 99–22434 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–98–4622]

Transportation Equity Act for the 21st Century: Implementation Guidance for the National Corridor Planning and Development Program and the Coordinated Border Infrastructure Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments; solicitation of applications for fiscal year (FY) 2000 grants.

SUMMARY: This document provides implementation guidance on section 1118 and 1119 of the Transportation Equity Act for the 21st Century (TEA–21). These sections established the National Corridor Planning and Development Program (NCPD program) and the Coordinated Border Infrastructure Program (CBI program). The NCPD and the CBI programs are funded by a single funding source. These programs provide funding for planning, project development, construction and operation of projects that serve border regions near Mexico and Canada and high priority corridors throughout the United States. States and metropolitan planning organizations (MPOs) are, under the NCPD program, eligible for discretionary grants for: Corridor feasibility; corridor planning; multistate coordination; environmental review; and construction. Border States and (MPOs) are, under the CBI program, eligible for discretionary grants for: Transportation and safety infrastructure improvements, operation and regulatory improvements, and coordination and safety inspection improvements in a border region.

DATES: Grant applications should be received by FHWA Division Offices on November 29, 1999. Specific information required in grant applications is provided in Section III of this notice. Comments on program implementation should be received on or before January 27, 2000. The additional time is provided so that any applicants can use the first 60 days to fully concentrate on preparing grant applications and, subsequently, to use information developed during that time to formulate comments in the following 90 days. The FHWA will consider comments received in developing the FY 2001 solicitation of grant applications. More information on the type of comments sought by the FHWA is provided in Section II of this notice.

ADDRESSES: You signed, written comments on program implementation for FY 2001 and beyond should refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, US DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments should include a self-addressed, stamped envelope or postcard.

Applications for FY 2000 grants under the NCPD and CBI programs should be submitted to the FHWA Division Office in the State where the applicant is located.

FOR FURTHER INFORMATION CONTACT: For program issues: Mr. Martin Weiss, Office of Intermodal and Statewide Programs, HEPS, (202) 366–5010; or for legal issues: Mrs. Diane Mobley (for the NCPD program), Office of the Chief Counsel, HCC–31, (202) 366–1366; or Ms. Grace Reidy (for the CBI program), Office of the Chief Counsel, HCC–31, (202) 366–6226; Federal Highway Administration, 400 Seventh Street SW., Washington D.C. 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Service at (202) #512–1661. Internet users may reach the Office of the **Federal Register's** home page at: http://www.access.nara.gov/fedreg and the Government Printing Office's web page at htt://www.access.gpo.gov/nara.

In addition, a number of documents and links concerning the NCPD and CBI programs are available though the home page of the Corridor/Border Programs: http://www.fhwa.dot.gov/hep10/corbor/corbor.html.

Background

Sections 1118 and 1119 of the TEA–21, Public Law 105–178, 112 Stat. 107, at 161, establish the NCPD and CBI programs, respectively. These programs respond to substantial interest dating from, as early as, 1991. In that year, the Intermodal Surface Transportation Efficiency Act (ISTEA), Pub. L. 102–240, 105 Stat. 1914, designated a number of high priority corridors. Subsequent legislation modified the corridor descriptions and designated additional corridors. Citizen and civic groups promoted many of these corridors as, for example, a means to accommodate international trade. Similarly, since 1991, a number of studies identified infrastructure and operation deficiencies near the U.S. borders with Mexico and Canada. Also various groups, some international and/or intergovernmental, studies opportunities to improve infrastructure and operations.

In 1997, the DOT's Strategic Plan for 1997–2002 was established. The strategic goals in this plan are: Safety, mobility, economic growth and trade, human and natural environment, and national security. In 1998, the FHWA's National Strategic Plan was established. The strategic goals in this plan are: Mobility, safety, productivity, human and natural environment and national security. Both sets of goals are consistent with the language of TEA–21, including sections 1118 and 1119.

The NCPD and CBI programs are funded by a single funding source. The combined authorized funding for these two programs is $140 million in each year from FY 1999 and FY 2003 (a total of $700 million). However, obligations are limited each year by the requirements of section 1102 (Obligation Ceiling) of the TEA–21.

Under the NCPD program, funds are available to States and MPOs for coordinated planning, design, and construction of corridors of national significance, economic growth, and international or interregional trade. Under the CBI program, funds are available to border States and MPOs for projects to improve the safe movement of people and goods at, or across, the border between the United States and Canada, and the border between the United States and Mexico. In addition, the Secretary may transfer up to a total of $10 million of combined program funds, over the life of the TEA–21, to the Administrator of General Services for the construction of transportation infrastructure necessary for law enforcement in border States. Such transfer(s) will be made, based on funding requested and supporting information furnished by the Administrator of General Services. Finally, the Secretary of Transportation (the Secretary) will implement any provisions in legislation that directs that FY 2000 NCPD/CBI funds be used for specific projects. Based on the factors noted above (i.e., obligation limitations, transfer of funds to GSA and legislation), the FHWA anticipates that between $95 million and $130 million will be available for allocation for projects submitted in response to this notice.

The Federal share for these funds is set by 23 U.S.C. 120 (generally 80 percent plus the sliding scale adjustment in States with substantial public lands). The period of availability for obligation is the fiscal year for which the funds are authorized and the three years following. States which receive an allocation of funds under these programs will, at the same time, receive an increase in obligation equal to the allocation. Under section 1102 of TEA–21, obligation authority for discretionary programs that is provided during a fiscal year is extinguished at the end of the fiscal year. Funds allocated to projects which, under the NCPD/CBI programs, receive an obligation authority increase for FY 2000, must therefore be obligated during FY 2000 or be withdrawn for redistribution.

This notice includes four sections:

Section I—Program Background and Implementation of the NCPD/CBI Discretionary Program in FY 1999

Section II—Eligibility and Selection Criteria for FY 2000 Grants

Section III—Request for Comments on Program Implementation in FY 2001 and Beyond

Section IV—Solicitation of Applications for FY 2000 Grants

Section I—Program Background and Implementation of the NCPD/CBI Discretionary Program in FY 1999

The FHWA implemented the NCPD/CBI programs with specific goals. In addition, the FHWA considered the following: Comments received at outreach sessions; information received during program discussions within the DOT; and information received during discussions between officials of the DOT and a variety of public sector and private sector officials. The FY 1999 implementation goals were:

1. Respect both the letter and the intent of existing statutes.

2. Minimize administrative additions to statutory requirements.

3. Minimize grant application paperwork.

4. Maximize administrative control of grants by FHWA field personnel rather than FHWA Headquarters personnel.

5. Encourage substantive coordination of grant applications and grant administration by State and local officials.

6. Encourage appropriate private/public, State/local, intermodal,

interregional, multistate and multinational coordination.

7. Encourage grant applications that have realistic objectives and time horizons.

Summary of Selection Process—FY 1999

The FHWA received 151 applications for NCPD/CBI funding, all of which were at least partially eligible (e.g., some applications included work components that were not eligible and also included work components that were eligible) for consideration. The requests for funding totaled over $2.2 billion compared with $123,620,000 available for allocation. The FHWA established an evaluation panel comprised of officials from various agencies within the DOT (e.g., the Federal Railroad Administration, the Federal Transit Administration, the Office of the Secretary of Transportation, as well as the FHWA) which reviewed the applications and tabulated summaries of applications. The evaluation panel identified applications that were ''well qualified'' and those which were ''qualified'' based on summary information prepared by the FHWA program office. This information was presented to the FHWA Administrator and other DOT management officials who together selected 55 applications for funding totaling $123,603,000; some for full funding of the amount requested, some for funding of a portion of the amount requested. An announcement of the selections was made on May 27, 1999. The list of all applications, and well as the list of selected applications, are available at the URL noted above. A report, for the fiscal quarter covering the May 27, 1999, selections, containing the reasons for selection of projects, is required by section 1311 of the TEA–21, as amended. At the time of this notice, the report for that quarter is not available. When completed, it will be available at URL: *http://www.fhwa.dot.gov/discretionary/*

Summary of Comments to the Docket

The November 12, 1998 **Federal Register** notice (63 FR 63351) requested comments on how the NCPD/CBI programs implementation could be improved in FY 2000, as well as other aspects of the program. Commenters were asked specifically for improvements that could be made at the discretion of the FHWA that would more effectively meet the seven goals established for the program.

The following organizations submitted letters to the docket (FHWA–1998–4622):

Pennsylvania Turnpike Commission
Texas Department of Transportation
Canadian National Railway
Whatcom County Council of Governments
State of Michigan, Department of Transportation
Wisconsin Department of Transportation
Washington State Department of Transportation
Illinois Department of Transportation
ITS America
Science Applications International Corporation

Although no specific comment was raised by more than one or two of the letters, there were a number of comments that addressed similar issues or discussed similar problems.

The most common comment, made to some extent by all but one letter, was the suggestion that more evaluation weight be given to certain characteristics of applications. In a number of such cases, commenters asserted that Congress ''meant'' to give more weight to these characteristics. The FHWA was unable to find any statutory language to support any of these assertions. In all cases where a suggestion was made to give more weight to certain characteristics of applications, these characteristics were those contained in applications submitted or favored by the organization writing the letter. The FHWA has, however, reconsidered the overall subject of selection in response to these comments. Based on this reconsideration, the FHWA will emphasize, in the selections, applications that support the DOT and the FHWA strategic goals noted previously in the context of the statute.

A common problem, cited to some extent by four commenters, was that of addressing criteria specifically cited in the statute, e.g., international truck-borne cargo, reduction in commercial and other travel time through a port of entry, the value of the cargo and congestion impose economic costs on the Nation's economy, and encourage or facilitates multistate or regional mobility. While developing the FY 1999 solicitation of applications, the FHWA did not find any cost effective, easy-to-use methodologies for quantifying the specific terms noted above. thus, in that solicitation, the FHWA allowed the use of surrogates to address such requirements and will continue to allow the use of surrogates in addressing statutory criteria in the FY 2000 solicitation. However, the FHWA and other agencies are currently investing time and money in developing better means to measure and predict these terms.

Another common problem, cited to some extent by four commenters, was that of not being sure where to place particular project information in the application. One commenter suggested that the FHWA prescribe a consistent uniform format for applications. While the FHWA does not believe a prescriptive approach is needed, additional consistency in applications is desirable. Therefore, the FHWA has modified and clarified the section containing the application format accordingly.

Four commenters mentioned performance measures. One noted that there was no detailed direction about this for applicants and three suggested examples of performance measures for use by applicants. The FHWA did not provide detailed direction on this during the FY 1999 solicitation process, because there was no clear statutory basis to develop such direction. However, the FHWA Strategic Plan, discussed above, includes a number of measures particularly relevant to these programs (e.g., reduction of delay on Federal-aid highways, reduction of delay at international border crossings, reduction of freight costs per ton mile, education of fatalities). The FHWA Strategic Plan is available at URL: *http://intra.fhwa.dot.gov/strategic/index.htm*. Thus, the evaluation considerations have been modified to note that meeting the goals in the FHWA strategic plan goals will be specifically considered in evaluating the selection criteria. Furthermore, the item in the application format on performance measures has been similarly modified.

Two commenters complimented certain aspects of the solicitation process. One especially appreciated the extensive guidance posted on the Internet; the other appreciated the flexibility to use existing planning and project development products as constituting the corridor development and management plan. The FHWA intends to continue the Internet posting of guidance and is continuing the flexibility regarding the corridor development and management plan.

The Texas Department of Transportation stated that the FHWA's interpretation of the statutory language was too flexible in that the FHWA allowed applicants to provide information on ''interstate or interregional traffic'' as a surrogate for the term ''international truck-borne commodities.'' The latter term is the one which appears in section 1118 of the TEA–21. The same letter suggested clarification on how States and MPOs should address criteria that are difficult to quantify and specifically noted that

''international truck-borne commodities'' was one of those criteria. As noted above, the FHWA has not found any cost effective easy-to-use methodologies for quantifying the specific term used in the statute and will continue to allow the use of surrogates in addressing statutory criteria for FY 2000 while the FHWA and other agencies are investigating better measurement.

In addition, the Texas Department of Transportation stated that there is little transportation related trade data that is complete, reliable, comparable from State to State, easy to use, and inexpensive to obtain. The comment was made that the DOT should ensure this data is verified before using it to distribute program funds. The FHWA agrees with the comment about the lack of the kind of data desired. Because of this situation, the FHWA did not distribute FY 1999 program funds based on formulas or fixed numerical rating methods. Since there is no reasonable probability that this data situation will change, the FHWA does not expect to use formulas or fixed numerical rating methods for distributing FY 2000 program funds.

Finally, the Texas Department of Transportation commented that FHWA should provide applicants with information on how projects were selected and how applications could be improved. Information on selection was provided earlier in this notice. With respect to improving future applications, the FHWA division offices provide information to applicants on a case-by-case basis.

The Canadian National Railway stated that corridor plans (required by section 1118 of the TEA–21) will not indicate substantive intermodal, particularly freight rail, improvement opportunities. Section 1118(d) of the TEA–21, which provides the statutory reference for the corridor plan, nowhere requires, or even mentions rail freight or intermodal opportunities as a plan element. However, the FHWA considers intermodal opportunities as valid in the more general context of statewide and metropolitan planning, and intends, in updating regulations on statewide and metropolitan planning, to assure an appropriate level of intermodal attention.

The Whatcom County Council of Governments stated that a fixed schedule for announcing solicitations and allocations over the life of the program would be desirable. The FHWA is attempting to meet this desire by making the NCPD/CBI solicitations and allocations closer to the timetable used in other discretionary programs (e.g., ferry boats, public lands).

The State of Michigan, Department of Transportation objected to the FHWA division office accepting the application of a metropolitan planning organization (MPO) which had not cleared the application with the State DOT. The statute allows grants to an MPO and, therefore, acceptance of this application was clearly proper. It is expected that through its involvement in the MPO, the State DOT will be consulted in the MPO application(s).

The Wisconsin Department of Transportation commented that no new corridors be designated until substantial progress has been made on the corridors already listed in the TEA–21. Since the FHWA does not have the authority to designate corridors (nor does the Secretary), no response is made to this comment.

The Washington State Department of Transportation stated that spreading allocations to every corridor and every border crossing (referred to by the commenter as ''peanut buttering'') should be avoided. The comment went on to note that this point was made at other venues. This comment has merit and the FHWA took this into consideration in the FY 1999 allocations and intends to do so in the FY 2000 allocations.

Finally, two commenters encouraged the DOT/FHWA to ensure that a significant number of selected projects incorporated Intelligent Transportation Systems (ITS) and related technologies. As noted below, the FHWA strategic goals will be considered in the FY 2000 selections, specifically those involving ITS.

Section II—Eligibility and Selection Criteria for FY 2000 Grants

In general, the eligibility and selection criteria for FY 2000 grants are the same as those used for FY 1999 grants with one change; namely, that the FHWA is, in effect, considering not only the goals stated in the FY 1999 solicitations (see above) but also the US Department of Transportation and the FHWA strategic goals in making grant selections.

Eligibility—NCPD Program

Projects eligible for funding include the following:

1. Feasibility studies.
2. Comprehensive corridor planning and design activities.
3. Location and routing studies.
4. Multistate and intrastate coordination for corridors.
5. Environmental review or construction after review by the Secretary of a development and management plan for the corridor or useable section of the corridor (hence called ''corridor plan'').

The FHWA considers work in the pre-feasibility stage of a project, e.g., development of metropolitan and State plans and programs, as not eligible for support with Federal aid under section 1118 funds (although funds authorized by other portions of the TEA–21 are eligible for such support), but project development planning is eligible for support and multistate freight planning is specifically encouraged herein.

The FHWA construes the phrase ''environmental review,'' as used above, as being the portion of the environmental documentation e.g., environmental assessment/finding of non significant impact (EA/FONSI), environmental impact statement (EIS) process requiring formal interagency review and comment. Thus, even without review of the corridor plan, work needed to produce the pre-draft EIS and to revise the draft would be eligible for support with Federal aid under section 1118. However, work subsequent to FHWA signature of the draft EIS (or equivalent) would not be eligible for such support until review of the corridor plan. Subsequent to such a review, work on a final EIS and any other necessary environmental work would be eligible for funding under this section.

Eligibility for funds from the NCPD program is limited to high priority corridors identified in section 1105(c) of the ISTEA, as amended, and any other significant regional or multistate highway corridors selected by the Secretary after consideration of the criteria listed for selecting projects for NCPD funding. Fund allocation to a corridor does not constitute designation of the corridor as a high priority corridor. The FHWA has no statutory authority to make such a designation.

Eligibility—CBI Program

Projects eligible for funding include the following:

1. Improvements to existing transportation and supporting infrastructure that facilitate cross border vehicle and cargo movements.

2. Construction of highways and related safety and safety enforcement facilities that will facilitate vehicle and cargo movements related to international trade.

3. Operational improvements, including improvements relating to electronic data interchange and use of telecommunications, to expedite cross border vehicle and cargo movement.

4. Modifications to regulatory procedures to expedite cross border vehicle and cargo movements.

5. International coordination of planning, programming, and border operation with Canada and Mexico relating to expediting cross border vehicle and cargo movements.

6. Activities of Federal inspection agencies.

The statute requires projects to be in a border region. The FHWA considers projects within 100km (62 miles) of the U.S./Canada or U.S./Mexico border to be in a border region.

Selection Criteria for the NCPD Program Funding

The statute provides criteria to be used in identifying corridors, in addition to those statutorily designated for eligibility. These following criteria will be used for selecting projects for funding:

1. The extent to which the annual volume of commercial vehicle traffic at the border stations or ports of entry of each State has increased since the date of enactment of the North American Free Trade Agreement (NAFTA), and is projected to increase in the future.

2. The extent to which commercial vehicle traffic in each State has increased since the date of enactment of the NAFTA, and is projected to increase in the future.

3. The extent to which international truck-borne commodities move through each State.

4. The reduction in commercial and other travel time through a major international gateway or affected port of entry expected as a result of the proposed project including the level of traffic delays at major highway/rail grade crossings in trade corridors.

5. The extent of leveraging of Federal funds, including use of innovative financing; combination with funding provided under other sections of the TEA–21 and title 23 U.S.C.; and combination with other sources of Federal, State, local, or private funding including State, local and private matching funds.

6. The value of the cargo carried by commercial vehicle traffic, to the extent that the value of the cargo and congestion impose economic costs on the Nation's economy.

7. Encourage or facilitate major multistate or regional mobility and economic growth and development in areas undeserved by existing highway infrastructure.

Specific aspects of the NCPD program require the FHWA to interpret these criteria. Based on the goals noted above in Section I, the FHWA intends to use a flexible interpretation. For example, while the date of the enactment of NAFTA was December 8, 1993, traffic data which provides an average for the calendar year 1993 could be used for the pre-NAFTA information. For another example, since businesses use both imported and domestically produced materials in a constantly changing component mix to produce higher valued products, and, because interregional trade is noted as part of the purpose of the section, either interstate traffic or interregional traffic could be used as a surrogate for ''international truck-borne commodities.'' Similarly, where determining the value of cargo carried by commercial vehicle traffic would be impossible without using proprietary information, a reasonable surrogate could be based on the vehicle traffic multiplied by an imputed value for various classes of cargo.

Selection Criteria for the CBI Program Funding

The selection criteria in the statute are as follows:

1. Expected reduction in commercial and other motor vehicle travel time through an international border crossing as a result of the project.

2. Improvements in vehicle and highway safety and cargo security related to motor vehicles crossing a border with Canada or Mexico.

3. Strategies to increase the use of existing, underutilized border crossing facilities and approaches.

4. Leveraging of Federal funds, including use of innovative financing, combination of such funds with funding provided under other sections of the TEA–21 and combination with other sources of Federal, State, local or private funding.

5. Degree of multinational involvement in the project and demonstrated coordination with other Federal agencies responsible for the inspection of vehicles, cargo, and persons crossing international borders and their counterpart agencies in Canada and Mexico.

6. Improvements in vehicle and highway safety and cargo security in and through the gateway or affected port of entry concerned.

7. The extent to which the innovative and problem solving techniques of the proposed project would be applicable to other border stations or ports of entry.

8. Demonstrated local commitment to implement and sustain continuing comprehensive border or affected port of entry planning processes and improvement programs.

As in the NCPD program criteria, the FHWA intends to use a flexible interpretation of the CBI program selection criteria. For example, because local (e.g., business association, civic, county, municipal, utility) agencies and organizations sometimes have very small capital improvement budgets, that local commitment for continuing planning and improvement will be considered in the context of local program cooperation with State projects in the border regions, as well as in the context of local financial support for such projects.

Selection Criteria Common to Both Programs

Although all Federal-aid programs relate to the achievement of the FHWA's strategic goals—safety, mobility, productivity, environment, and national security—these discretionary programs apply most directly to fulfillment of the safety, mobility, and productivity goals. In addition, Departmental policy, related Federal directives and the Government Performance and Results Act of 1993, Public Law 103–62, 107 Stat. 285, emphasize the use of coordinated agency strategies and advanced technology applications to achieve goals in a cost-effective and environmentally sound manner. As noted in the Administrator's message accompanying the 1998 FHWA National Strategic Plan, the strategic goals and policies, ''guide FHWA decisions on a day-to-day basis, and will help our partners to frame their own agendas within a context that contributes to achieving these broad national goals.'' In accordance with this guidance, in making selections, the Administrator will emphasize proposals related to motor carrier safety enforcement facilities, integrated trade transportation processing systems to improve border crossings, multistate freight planning efforts, and applications of operational strategies, including ITS applications.

In addition, the concept of equity was important in the development of the TEA–21. National geographic distribution among all discretionary programs and congressional direction or guidance will be considered by the Administrator in the selection of projects for discretionary funds.

Evaluation Considerations for Both the NCPD and the CBI Program

To adequately evaluate the extent to which selection criteria noted above are met by individual projects, the FHWA will consider the following in each grant application:

1. The extent to which the project will help meet the FHWA and the DOT strategic goals as noted above.

2. Likelihood of expeditious completion of a usable project or product.

3. Size, in dollars, of the program grant request in comparison to likely accomplishments (e.g., grant requests that exceed about 10 percent of the available NCPD and CBI program funding in a given year would be expected to be subject to extra scrutiny to determine whether the likely consequences would be commensurate with that level of funding).

4. Clarity and conciseness of the grant application in submission of the required information.

5. State priorities and endorsement of, or opposition to, projects by other States, MPOs and other public and private agencies or organizations, as well as the status of the project on the State transportation improvement program (STIP) and the metropolitan transportation improvement program (TIP).

6. The extent to which the project may be eligible under both the NCPD and the CBI program.

Section III—Request for Comments on Program Implementation in FY 2001 and Beyond

The FHWA has, as noted above, changed the selection criteria somewhat from what they were in the FY 1999 solicitation. In addition, the FHWA may consider requiring the use of electronic submittals for FY 2001 for the narrative portion of the application (not maps). Consequently, the FHWA is specifically requesting comments on these two aspects of program implementation. In addition, although, as noted above, comments have been made previously, agencies that wish to reconsider their previous comment(s) or make additional or new comments on other aspects of program implementation are invited to do so. The docket number noted in the beginning of this notice should be referenced.

Section IV—Solicitation of Applications for FY 2000 Grants

As noted above, applications for FY 2000 grants are to be sent to the division office in the State where the applicant is located or to the division office in the lead State, where a project is in more than one State.

When sending in applications, the States and MPOs must understand that any qualified projects may or may not be selected. It may be necessary to supplement NCPD and CBI program funds with other Federal-aid and/or other funds to complete a useable project or product. Allocations of FY 2000 funds will be made considering the degree to which proposed projects are viable and implementation schedules are realistic.

There is no prescribed format for project submission. The FHWA has developed, however, a sample application format and summary format which, if used, provides all the information needed to fairly evaluate candidate projects. The FHWA expects that, except for especially complex or geographically extensive projects, applications (excluding the corridor plan which is to be a separate document) should be no more than 12 pages in length and the summary should be one page in length. Applications that do not include all the described information may be considered incomplete. The sample application format and summary format are:

Format for Application for NCPD or CBI Discretionary Funds

1. State (if a multi state or multi MPO project list the lead State/MPO and participating States/MPO);

2. Congressional high priority corridor number(s), if applicable;

3. County(ies) or Parish(es);

4. U.S. Congressional District(s) and name of U.S. Representative(s) in the District(s);

5. Project Location, including a map or maps (no more than two, except for extraordinarily complex projects) with U.S. State, local numbered routes and other important facilities clearly identified;

6. Project objectives and benefits;

7. Proposed work, identifying which specific element(s) of work corresponds to each of the list of eligible NCPD and/or CBI work types and disaggregating the work into phases, if applicable;

8. Planning, programming, coordinating and scheduling status: Identifying whether the project is included, or expected to be included, in State and MPO plans and programs (e.g., STIPs and TIPs); noting consistency with plans and programs as developed by empowerment zone and enterprise community organizations; noting consistency with air quality plans; noting coordination with inspection agencies and with Canada and Mexico; and, stating the expected project initiation, milestone and/or project component completion and overall project completion dates;

9. Current and projected traffic (auto, heavy truck, and, if applicable, light truck, pedestrian, bicycle, transit vehicle, railcar, etc.) and motor carrier and highway safety information for significant facilities integral to the project;

10. Financial information and projections, including: total estimated cost of improvement to the overall corridor or border facility; a listing by year and source of previous funding (if part of a larger project, this should include previous funding for the overall project) from all sources; and, a listing, by year, amount and source, of other funds committed to the project or useable portions of the project;

11. Infrastructure condition information, applicable to infrastructure improvement projects where, at the time of the application, the facilities to be improved are reasonably known;

12. Information regarding ownership, applicable to infrastructure improvement projects where, at the time of the application, the facilities to be improved are reasonably know;

13. Maintenance responsibility, applicable to infrastructure improvement projects where, at the time of the application, the facilities to be improved are reasonably known;

14a. Other information needed to specifically address the seven selection criteria for NCPD program funding (e.g., increase in commercial traffic); and/or

14b. Other information needed to specifically address the eight selection criteria for CBI program funding (e.g., reduction in travel time);

15. Amount of NCPD program and/or CBI program funds requested, as well as written confirmation of the source and amount of non-Federal funds that make up the non-Federal share of the project;

16. Willingness to accept partial funding (if not indicated, the FHWA will construe that partial funding is acceptable);

17a. The priority within the State (or lead State) assigned to the application, relative to other applications submitted by that State, that is a clearly defined e.g., priority one or priority two, (not a qualified priority such as priority one for CBI or priority one for planning); or

17b. The reason(s) why a priority was not assigned;

18. Public endorsements of, expectations for or opposition to the project by public and private organizations who expect to use the work to be funded by the grant as well as those who expect to benefit or be adversely affected, directly or indirectly, from such work (a summary of such endorsements, delineating the oral from the written, and if appropriate, the extent of the support, is needed; however, copies of endorsements are not needed and should not be included in the application);

19a. A summary of the corridor plan, for those applications for the NCPD program where the work to be funded

includes environmental review or construction and where the project is not on a corridor identified by section 1105(c) of the ISTEA, as amended (for other NCPD applications this item is optional);

19b. Corridor plan, separate from the rest of the application, for those applications for the NCPD program where the work to be funded includes environmental review or construction.

20. Performance measures in support of the FHWA Strategic Plan; and

21. Summary sheet covering basic project information (see below).

Format for Summary Sheet—Application for NCPD or CBI Discretionary Funds

Grantee: List full name of agency.

U.S. Representative/Senator(s): List full names.

Governor/Mayor(s): List full names.

Project: Short name and brief description of project (e.g., This project provides for widening by one lane in each direction of * * * extending from * * * in the vicinity of * * * to * * * in the vicinity of * * * a distance of. * * * This improvement will serve * * * and * * * will result in major safety/time savings * * * to * * *).

FHWA Funds Requested: Exclude non-Federal share.

Other Funds Committed: Specify source and amounts.

Other Support: List agencies providing substantive assistance.

Other Important Information: (e.g., improved access to Indian Reservation, expected improvement to local economy, specify phase of project or corridor development, specify on going projects that will be coordinated with this one, identify environmental features, construction scheduling—all if appropriate).

Authority: 23 U.S.C. 315; secs. 1118 and 1119, Pub. L. 105–178, 112 Stat. 107, at 161 (1998); and 49 CFR 1.48.

Issued on: August 24, 1999.

Anthony R. Kane,

Executive Director.

[FR Doc. 99–22473 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–1999–6171]

Liquefied Natural Gas (LNG) Vessels; Notice of Application for Approval Under Section 9 Of the Shipping Act, 1916, as Amended, to Transfer Registry of the U.S.-Flag LNG Vessels LNG: Aquarius, Aries, Capricorn, Gemini, Leo, Libra, Virgo, and Taurus to the Marshall Islands

Wilmington Trust Company and United States Trust Company of New York, as Owner Trustees, Hull Fifty Corporation, Patriot I Shipping Corp., Patriot II Shipping Corp., and Patriot IV Shipping Corp. by applications submitted January 20 and August 20, 1999, request the approval required by Section 9 of the Shipping Act, 1916, as amended (Act), of the transfer to foreign registry of the LNG *Aquarius*, LNG *Aries*, LNG *Capricorn*, LNG *Taurus*, LNG *Libra*, LNG *Gemini*, LNG *Leo*, and LNG *Virgo* (Vessels). The Vessels, delivered between 1977 and 1979 in Quincy, Massachusetts, are 71,466 DWT liquefied natural gas carriers. The Vessels have been engaged in the carriage of LNG for Pertamina, the Indonesian State oil company, from Indonesia to Japan since their delivery, and it is expected that hey will continue to operate exclusively between foreign ports in the future. The proposed transfer of registry to the Marshall Islands does not include any change in ownership of the Vessels.

Any person, firm, or corporation having any interest in these applications for approval of the reflagging of the Vessels, and who desires to submit comments concerning the applications, should refer to the docket number that appears on this notice and submit their comments in triplicate to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit/*. Comments must be received no later than 5 P.M. Eastern Time September 14, 1999.

This notice is published as a matter of discretion. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

The application and all comments received will be available for examination at the above address between 10 A.M. and 5 P.M., Monday through Friday, except Federal holidays. An electronic version of this document is available at the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.

Dated: August 26, 1999.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99–22574 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–6157]

Pipeline Safety: Programmatic Environmental Assessment for Oil Pollution Act Facility Response Plans

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Availability of the environmental assessment for the Office of Pipeline Safety's Response Plan Review and Exercise Program.

SUMMARY: Pursuant to Council on Environmental Quality regulations and Department of Transportation policy, the Research and Special Programs Administration announces the availability of an Environmental Assessment for the Office of Pipeline Safety's (OPS) Response Plan Review and Exercise Program. The Environmental Assessment examines the effects of the program on the environment and on pipeline operators' ability to respond to oil spills affecting waters of the United States. The Research and Special Programs Administration is soliciting comments on this Environmental Assessment. These comments will be considered in evaluating it and in making decisions pursuant to the National Environmental Policy Act (NEPA).

ADDRESSES: Comments on the Environmental Assessment should be submitted to: Jim Taylor, Response Plans Officer, US Department of Transportation, Research and Special Programs Administration, Office of Pipeline Safety, Room 7128, 400 7th Street, SW, Washington, DC 20590 or email jim.taylor@rspa.dot.gov. A limited number of copies of the Environmental Assessment are available on request. Public reading copies of the Environmental Assessment will be available at the Department of Transportation Docket Center, Room PL–401, 400 7th Street, SW, Washington DC, 20590. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

DATES: The Environmental Assessment will remain available for public comment through September 29, 1999. Written comments should be received no later than September 29, 1999. Late comments will be considered so far as practicable.

FOR FURTHER INFORMATION CONTACT: Persons with questions about the Environmental Assessment may contact Jim Taylor at (202) 366–8860 or email *jim.taylor@rspa.dot.gov*. Persons with questions about viewing the Environmental Assessment in the DOT Docket Center may contact Dorothy Walker at (202) 366–9329 or email *dorothy.walker@tasc.dot.gov*.

SUPPLEMENTARY INFORMATION: In 1990, the United States Congress passed Public Law 101–380, the Oil Pollution Act of 1990 (OPA), to improve the nation's ability to respond to, and limit the economic and environmental impact from, marine spills of oil and other pollutants. Section 4202 of the OPA modifies the planning and response system created under the authority of Section 311(j) of the Federal Water Pollution Control Act (also known as the Clean Water Act). OPA required response plans for vessels and facilities that produce, store, transport, refine, and market oil.

Just as oil tankers are required to submit oil spill response plans to the Coast Guard and refineries are required to submit such plans to the Environmental Protection Agency (EPA), oil pipelines are required to submit their facility response plans (FRP) to OPS for review and approval. To date, more than 1300 facility response plans have been submitted to OPS. They represent some 200 oil pipeline operators, and lines that vary from 3-inch gathering systems to 36-inch product lines to the 48-inch Trans-Alaska Pipeline System. OPS conducts a thorough review of the plans, with particular emphasis on the adequacy of the pipeline operator's response resources, incident command system, and ability to protect environmentally sensitive areas from harm. OPS also makes sure that pipeline operators' plans are consistent with both the National Contingency Plan and the local Area Contingency Plan, which are developed by the Coast Guard and EPA.

In addition to reviewing operators' plans, OPS conducts exercises to test pipeline operators' ability to implement their facility response plans. To date, OPS has conducted sixty-nine Tabletop Exercises, scenario-driven discussions in which operators explain how they would implement their plans to respond to a worst-case spill. OPS has also conducted nine full-scale Area Exercises with pipeline operators in which they deploy people and equipment to the field in response to a simulated spill. In both Tabletop and Area Exercises, OPS makes every effort to have other Federal, State, and local environmental and emergency response agencies participate. Their participation makes exercises more realistic, and builds relationships between industry and public sector responders that make the response to real spills go more smoothly.

The Environmental Assessment concisely describes OPS's recent review of the effectiveness of its Response Plan Review and Exercise Program, its proposed action to continue implementation of the current program, the alternative programmatic approaches considered, the environment affected by this action, the consequences to the environment of the alternatives considered, and a list of the agencies and organizations consulted.

Issued in Washington, DC, on August 24, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–22332 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33785]

Utah Railway Company—Acquisition and Operation Exemption—Lines of Utah Transit Authority in Salt Lake City, UT

The Utah Railway Company (URC), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41, *et seq.* to acquire rights to operate over approximately 25 miles of rail line from milepost 775.19 at the Salt Lake County/Utah County boundary line to milepost 798.74 at Ninth South Street in Salt Lake City, including the 1.4-mile Lovendahl Spur. URC filed a supplement to the notice on August 9, 1999.

The notice recites that URC is acquiring ''certain rights of Salt Lake City Southern Railroad Company, Inc. (SLCS) to operate over certain rail lines owned by Utah Transit Authority (UTA).'' While UTA owns the underlying real property, it does not possess an ownership interest in a railroad right-of-way as such ownership is understood by this agency. If it did, UTA would have had to obtain authority from this agency for such an acquisition. UTA holds no such authority. Rather, SLCS owns the right-of-way, having acquired a permanent easement from the Union Pacific Railroad Company.

The notice recites that URC may consummate the transaction on September 30, 1999, 60 days after notice of the proposed transaction was posted at the workplace of the employees on the affected line. The regulations at 49 CFR 1150.42(e) provide, however, that the transaction not be consummated until 60 days after certification to the Board that the notice has been posted. Because this agency did not receive the certification until August 9, 1999, the transaction may not be consummated until October 8, 1999 at the earliest. In STB Docket No. AB–520, Salt Lake City Southern Railroad Company, Inc.—Adverse Abandonment—Line Of Utah Transit Authority in Salt Lake County, Utah, UTA has filed an adverse abandonment application against SLCS. UTC states that it will consummate the transaction in this proceeding after the Board authorizes SLCS's abandonment.

If this notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33785, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington DC 20423–0001. In addition, a copy of each pleading must be served on Theodore A. McConnell, Kirkpatrick & Lockhart LLP, 1500 Oliver Building, Pittsburgh, PA 15222.

Board decisions and notice are available on our website at ''WWW.STB.DOT.GOV.''

Decided: August 24, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–22465 Filed 8–27–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Performance Review Board

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice lists the membership to the Department Offices' Performance Review Board (PRB) and

supersedes the list published in **Federal Register** 54187, Vol. 63, No. 195, dated October 8, 1998, in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB is to review the performance of members of the Senior Executive Service and make recommendations regarding performance ratings, performance awards, and other personnel actions.

The names and titles of the PRB members are as follows:

Joan Affleck-Smith: Director, Office of Financial Institutions Policy
Steven O. App: Deputy Chief Financial Officer
John J. Auten: Director, Office of Financial Analysis
Elisabeth A. Bresee: Assistant Secretary (Enforcement)
Theodore N. Carter: Deputy Assistant Secretary (Management Operations)
Mary E. Chaves: Director, Office of International Debt Policy
Marcia H. Coates: Director, Office of Equal Opportunity Program
Lynda Y. de la Vina: Deputy Assistant Secretary (Policy Coordination)
Anna F. Dixon: Director, Office of Enforcement Budget Resource Policy
Kay Frances Dolan: Deputy Assistant Secretary (Human Resources)
Joseph B. Eichenberger: Director, Office of Multilateral Development Banks
James H. Fall, III: Deputy Assistant Secretary (Technical Assistance Policy)
James J. Flyzik: Deputy Assistant Secretary (Information Systems) and Chief Information Officer
Geraldine A. Gerardi: Deputy for Business Taxation
Ronald A. Glaser: Director, Office of Personnel Policy
John C. Hambor: Director, Office of Policy Analysis
Donald V. Hammond: Fiscal Assistant Secretary
Nancy Killefer: Assistant Secretary (Management) and Chief Financial Officer
Ellen W. Lazar: Director, CDFI Fund
David A. Lebryk: Deputy Assistant Secretary (Fiscal Operations and Policy)
Nancy Lee: Director, Office of Central and Eastern European Nations
Margrethe Lundsager: Deputy Assistant Secretary (Trade and Investment Policy)
Shelia Y. McCann: Deputy Assistant Secretary (Administration)
David Medina: Deputy Assistant Secretary (Enforcement Policy)
Mark C. Medish: Deputy Assistant Secretary (Eurasia and Middle East)
Carl L. Moravitz: Director, Office of Budget
William C. Murden: Director, Office of International Banking and Securities Markets
James R. Nunns: Director for Individual Taxation
Lisa G. Ross: Deputy Assistant Secretary (Strategy and Finance)
Lewis A. Sachs: Principal Deputy Assistant Secretary (Government Financial Policy)
G. Dale Seward: Director, Automated Systems Division
Mary Beth Shaw: Director, Office of Financial Management
Gay H. Sills: Director, Office of International Investment
John P. Simpson: Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement)
Jane L. Sullivan: Director, Information Technology Policy and Management
Jonathan Talisman: Deputy Assistant Secretary (Tax Policy)
Karen A. Wehner: Deputy Assistant Secretary (Law Enforcement)
Thomas C. Wiesner: Director, Corporate Systems Management
David W. Wilcox: Assistant Secretary (Economic Policy)

FOR FURTHER INFORMATION CONTACT: Barbara A. Hagle, Executive Secretary, PRB, Room 1462, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Telephone: (202) 622–1410. This notice does not meet the Department's criteria for significant regulations.

Lisa Ross,

Acting Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 99–21981 Filed 8–27–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Senior Executive Service Departmental Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

COMPOSITION OF DEPARTMENTAL PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Nancy Killefer, Assistant Secretary for Management and Chief Financial Officer—Chairperson
Kay Frances Dolan, Deputy Assistant Secretary (Human Resources)
John P. Simpson, Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement)
William H. Gillers, Deputy Associate Director, Bureau of Engraving and Printing
James E. Johnson, Under Secretary (Enforcement)
David A. Lebryk, Deputy Assistant Secretary for Fiscal Operations and Policy
Margrethe Lundsager, Deputy Assistant Secretary (Trade & Investment Policy)
Mary E. Chaves, Director, Office of International Debt Policy
Jane L. Sullivan, Director, Office of Information Resources Management
Joan Affleck-Smith, Director, Office of Financial Institutions Policy
John W. Magaw, Director, Bureau of Alcohol, Tobacco and Firearms
Samuel H. Banks, Deputy Commissioner, U.S. Customs Service
Douglas M. Browning, Assistant Commissioner (International Affairs), U.S. Customs Service
Brian L. Stafford, Director, U.S. Secret Service
W. Ralph Basham, Director, Federal Law Enforcement Training Center
John P. Mitchell, Deputy Director, U.S. Mint
Richard B. Calahan, Deputy Inspector General
Richard L. Gregg, Commissioner, Financial Management Service
Thomas A. Ferguson, Director, Bureau of Engraving and Printing
David A. Mader, Chief Officer, Management and Finance, Internal Revenue Service
Evelyn A. Petschek, Assistant Commissioner, Employee Plans and Exempt Organizations, Internal Revenue Service
Darlene R. Berthod, Deputy Chief Operations Officer, Internal Revenue Service
Frederic V. Zeck, Commissioner, Bureau of the Public Debt
Kenneth R. Schmalzbach, Assistant General Counsel (General Law & Ethics)
Roberta K. McInerney, Assistant General Counsel (Banking & Finance)

DATES: Membership is effective August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Ronald A. Glaser, Department of the Treasury, Director, Office of Personnel Policy, Annex Building, Room 4161, Pennsylvania Avenue at Madison Place, NW., Washington, DC 20220, Telephone: (202) 622–1890.

This notice does not meet the Department's criteria for significant regulations.

Ronald A. Glaser,

Director, Office of Personnel Policy.

[FR Doc. 99–22419 Filed 8–27–99; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''Beyond the Golden Fleece: The Jews of Georgia''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit ''Beyond the Golden Fleece: The Jews of Georgia'', imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Meridian International Center, Washington, D.C. from on or about October 26, 1999 to on or about November, 1999. The exhibition will subsequently travel to San Diego, CA and Houston, TX and possibly at other U.S. venues yet to be identified, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit items, or for other information, contact Carol Epstein, Assistant General Counsel, Office of the General Counsel at 202/619–6981. The address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: August 24, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–22482 Filed 8–27–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''From Schongauer to Holbein: Master Drawings from Basel and Berlin''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''From Schongauer to Holbein: Master Drawings from Basel and Berlin'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at National Gallery of Art, Washington, DC, from on or about October 24, 1999 to on or about January 9, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For futher information, contact Jacqueline Caldwell, Assistant General Counsel, Office of the General Counsel, 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: August 24, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–22481 Filed 8–27–99; 8:45 am]

BILLING CODE 8230–01–M

Federal Register

Monday
August 30, 1999

Part II

Environmental Protection Agency

40 CFR Part 60

Emission Guidelines for Existing Stationary Sources: Small Municipal Waste Combustion Units; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6424–6]

RIN 2060–AI51

Emission Guidelines for Existing Stationary Sources: Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to reestablish emission guidelines for existing small municipal waste combustion (MWC) units. When implemented, these emission guidelines will result in stringent emission limits for organics (dioxins/furans), metals (cadmium, lead, mercury, and particulate matter), and acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides). Emission guidelines for small MWC units were originally promulgated in December 1995 but were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in March 1997.

DATES: *Comments:* Comments on these proposed emission guidelines and comments on the Information Collection Request (ICR) document associated with these emission guidelines must be received on or before October 29, 1999.

Public Hearing: A public hearing will be held if requests to speak are received by September 14, 1999. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission guidelines. If requests to speak are received, the public hearing will take place in Research Triangle Park, North Carolina, approximately 30 days after August 30, 1999 and will begin at 10:00 a.m. A message regarding the status of the public hearing may be accessed by calling (919) 541–5264.

ADDRESSES: *Comments:* Submit comments on these proposed emission guidelines (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention Docket No. A–98–18, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Comments may also be submitted electronically. Send electronic submittals to: ''A-and-R-Docket@epamail.epa.gov''. Submit electronic comments in American Standard Code for Information Interchange (ASCII) format. Avoid the use of special characters and any form of encryption. Electronic comments on these proposed emission guidelines may be filed online at any Federal Depository Library. For additional information on comments and public hearing see the **SUPPLEMENTARY INFORMATION** section.

Docket: Docket No. A–98–18 for this proposal and associated Docket Nos. A–90–45 and A–89–08 contain supporting information for these emission guidelines. These dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW., Washington, DC 20460, or by calling (202) 260–7548. The dockets are located at the above address in Room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Stevenson at (919) 541–5264, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, e-mail: stevenson.walt@epa.gov.

SUPPLEMENTARY INFORMATION:

Comment Information

Comments and data will also be accepted on disks in WordPerfect® Version 5.1 or 6.1 file format (or ASCII file format). Address all comments and data for this proposal, whether on paper or in electronic form, such as through e-mail or disk, to Docket No. A–98–18.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it Confidential Business Information. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Ms. Melva Toomer, U.S. EPA, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 944, Durham, NC 27701. Do not submit Confidential Business Information (CBI) electronically.

The EPA will disclose information identified as Confidential Business Information only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing

If a public hearing is held, it will take place at EPA's Office of Administration Auditorium, Research Triangle Park, NC, or at an alternate site nearby. Persons interested in presenting oral testimony at the public hearing should notify Ms. Libby Bradley, Combustion Group, Emission Standard Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5578, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Bradley to verify the time, date, and location of the hearing. The final hearing status and location may be obtained by calling (919) 541–5264.

World Wide Web Site

Electronic versions of this notice, the proposed regulatory text, and other background information are available at the World Wide Web site that EPA has established for these proposed emission guidelines for small MWC units. The address is: ''http://www.epa.gov/ttn/uatw/129/mwc/rimwc2.html.'' For assistance in downloading files, call the EPA's Technology Transfer Network (TTN) HELP line at (919) 541–5384.

Regulated Entities

No entities would be directly regulated by this action because this proposal is an emission guideline, which requires additional State or Federal action for implementation. However, the promulgation of State or Federal plans implementing these emission guidelines would affect the following categories of sources:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry, Federal government, and State/local/tribal governments.	562213 92411	4953 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal waste) and do not recover energy from the waste.

This list is not intended to be exhaustive, but rather provides a guide regarding the entities EPA expects to be regulated by applicable State or Federal plans implementing these emission guidelines for small MWC units. These emission guidelines would primarily impact facilities in North American Industrial Classification System (NAICS) codes 562213 and 92411, formerly Standard Industrial Classification (SIC) codes 4953 and 9511, respectively. Not all facilities classified under these codes would be affected. To determine whether your facility would be regulated by State or Federal plans implementing these emission guidelines, carefully examine the applicability criteria in section II.A of this preamble and in §§ 60.1550 through 60.1565 of these proposed emission guidelines. If you have any questions regarding the applicability of this action to your small MWC unit or any other question or comment, please submit comments to Docket No. A–98–18 or refer to the **FOR FURTHER INFORMATION CONTACT** section.

Organization of This Document. The following outline is provided to aid in locating information in this preamble. Each section heading of the preamble is presented as a question and the text in the section answers the question.

Abbreviations and Acronyms Used in This Document

ASCII—American Standard Code for Information Interchange
ASME—American Society of Mechanical Engineers
CBI—Confidential Business Information
CFR—Code of Federal Regulations
DSI/ESP/CI—dry sorbent injection/electrostatic precipitator/carbon injection
EPA—Environmental Protection Agency
ESP—electrostatic precipitator
FR—Federal Register
ICR—Information Collection Request
kg/year—kilograms per year
MACT—maximum achievable control technology
mg/dscm—milligrams per dry standard cubic meter
Mg/year—megagrams per year
MSW—municipal solid waste
MWC—municipal waste combustion
NAICS—North American Industrial Classification System
ng/dscm—nanograms per dry standard cubic meter
NSPS—new source performance standards
NTTAA—National Technology Transfer and Advancement Act
OAQPS—Office of Air Quality Planning and Standards
OMB—Office of Management and Budget
OP—Office of Policy
Pub. L.—Public Law
ppmv—parts per million by volume
RDF—refuse-derived fuel
RFA—Regulatory Flexibility Act
SBREFA—Small Business Regulatory Enforcement Fairness Act
SD/ESP/CI—spray dryer/electrostatic precipitator/carbon injection
SD/FF/CI/SNCR—spray dryer/fabric filter/carbon injection/selective noncatalytic reduction
SIC—Standard Industrial Classification
TTN—Technology Transfer Network
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code

I. Background Information

On September 20, 1994, EPA proposed emission guidelines for large and small MWC units under 40 CFR part 60, subpart Cb. Those emission guidelines covered all MWC units located at plants with an aggregate plant combustion capacity larger than 35 megagrams per day of municipal solid waste (MSW), which is approximately 39 tons per day of MSW. The subpart Cb emission guidelines for large and small MWC units were promulgated on December 19, 1995.

The 1995 emission guidelines divided the MWC unit population into MWC units located at large MWC plants and MWC units located at small MWC plants based on the total aggregate capacity of all MWC units at the MWC plant. The large plant category included all MWC units located at MWC plants with aggregate plant combustion capacities greater than 225 megagrams per day (approximately 248 tons per

day). The small plant category comprised all MWC units located at MWC plants with aggregate plant combustion capacities of 35 to 225 megagrams per day (approximately 39 to 248 tons per day).

Following promulgation of the 1995 emission guidelines, a petition for review was filed with the U.S. Court of Appeals for the District of Columbia Circuit regarding the use of aggregate plant capacity as the basis for initial categorization of the MWC unit population. An initial opinion was issued by the court on December 6, 1996 (*Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F. 3d 1395, D.C. Cir. 1996). The initial opinion would have vacated (canceled) the 1995 emission guidelines for both large and small MWC units.

The EPA filed a petition for rehearing on February 4, 1997 requesting the court to reconsider the remedy portion of its opinion and to vacate these emission guidelines only as they apply to small MWC units (units having an individual capacity of 35 to 250 tons per day). The court granted EPA's petition, reconsidered its opinion, and issued a revised opinion on March 21, 1997 (*Davis County Solid Waste Management and Recovery District* v. *EPA*, 108 F. 3d 1454, D.C. Cir. 1997). The revised opinion remanded to EPA the 1995 emission guidelines for the large MWC unit category for amendment to be consistent with the court's final opinion and vacated these emission guidelines only as they applied to small MWC units.

Amendments to the 1995 emission guidelines incorporating the court's final opinion were published on August 25, 1997 (62 FR 45116). The amendments made the subpart Cb emission guidelines consistent with the court's decision and included other minor technical corrections to improve clarity. The principal change was to remove small MWC units from the applicability of subpart Cb. This was accomplished by increasing the lower size cutoff for large MWC units from 35 megagrams per day on a plant capacity basis to 250 tons per day on a unit capacity basis. No adverse comments were received on the proposal and they became effective on October 24, 1997.

With the increase in the lower size cutoff for large MWC units from 248 tons per day on a plant capacity basis to 250 tons per day on a unit capacity basis, 45 MWC units that were previously in the large MWC plant category were moved into the newly classified small MWC unit category. These units are commonly referred to as ''Davis class'' MWC units (referencing the name of the court's opinion that clarifies that EPA must move these units from the large MWC unit category to the small MWC unit category).

Today's proposal would reestablish emission guidelines for existing small municipal waste combustion capacities of 35 to 250 tons per day of MSW.

II. Summary of These Proposed Emission Guidelines

This section summarizes these proposed emission guidelines for small MWC units, including identification of the subcategories used in this proposal for small MWC units. Overall, these proposed emission guidelines for small MWC units are functionally equivalent to the 1995 emission guidelines for small MWC units.

A. What Sources Would be Directly or Indirectly Regulated by These Proposed Emission Guidelines?

Today's proposed emission guidelines would not directly regulate small MWC units, but they would require States to develop plans to limit air emissions from existing small MWC units. In this proposal and in associated State plans, a small MWC unit would be defined as any MWC unit with a combustion design capacity of 35 to 250 tons per day.

B. Has the Small MWC Unit Population Been Subcategorized Within this Proposal?

Yes, within these proposed emission guidelines, the small MWC unit population is subcategorized based on: (1) Aggregate capacity of the plant where the individual MWC unit is located, and (2) combustor type. The resulting subcategories are as follows: (1) Class A units are defined as nonrefractory-type small MWC units located at plants with an aggregate plant capacity greater than 250 tons per day of MSW, (2) Class B units are refractory-type small MWC units located at plants with an aggregate plant capacity greater than 250 tons per day of MSW, and (3) Class C units are all small MWC units located at plants with an aggregate plant capacity less than or equal to 250 tons per day of MSW.

C. What Pollutants Would be Regulated by These Proposed Emission Guidelines?

Section 129 of the Clean Air Act requires EPA to establish numerical emission limits for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, sulfur dioxide, hydrogen chloride, nitrogen oxides, and carbon monoxide. Section 129 specifies that EPA may also:

> * * * promulgate numerical emission limitations or provide for the monitoring of post-combustion concentrations of surrogate substances, parameters, or periods of residence times in excess of stated temperatures with respect to pollutants other than those listed [above] * * *.

Therefore, in addition to emission limits, EPA is proposing guidelines for unit operating load, flue gas temperature at the particulate matter control device inlet, and carbon feed rate as part of the good combustion practice requirements. The EPA is also proposing requirements for the control of fugitive ash emissions. All of these requirements were contained in the 1995 emission guidelines.

D. What is the Format of the Proposed Emission Limits in These Emission Guidelines?

The format of the proposed emission limits is identical to the format of the emission limits in the 1995 emission guidelines. The format is in the form of emission limits based on pollutant concentration. Alternative percentage reduction requirements are provided for mercury, sulfur dioxide, and hydrogen chloride. Opacity and fugitive ash requirements are identical to the 1995 emission guidelines. In addition to controlling stack emissions, these proposed emission guidelines incorporate the same good combustion practice requirements (i.e., operator training, operator certification, and operating requirements) that were included in the 1995 emission guidelines. Additionally, this proposal includes a clarification to the operator certification requirements to address periods when the certified chief facility operator and certified shift supervisor must be offsite. Section III.F provides more detail on the differences in operator certification requirements between these proposed subpart BBBB guidelines and the 1995 subpart Cb guidelines. Today's proposal also includes a revision to the activated carbon feed rate requirement. (Section III.G provides additional information on proposed changes to the carbon feed rate requirements.)

E. Where Can I Find a More Detailed Summary of These Proposed Emission Guidelines?

A concise summary of these proposed emission guidelines can be found either in: (1) Tables 2 through 5 of the proposed subpart BBBB emission guidelines following this preamble; or (2) the Technical Fact Sheet for this proposal that can be downloaded from the EPA World Wide Web site for small MWC units

(http://www.epa.gov/ttn/uatw/129/mwc/rimwc2.html).

III. Changes in These Proposed Emission Guidelines Relative to the 1995 Emission Guidelines

This section summarizes changes in the proposed emission guidelines compared to the 1995 emission guidelines. Overall, these emission guidelines are functionally equivalent to the 1995 emission guidelines, with minimal changes. The most significant change is the use of the plain language style for organizing and writing these emission guidelines. These proposed emission guidelines retain subcategorization by aggregate plant capacity and only a few emission limits have been revised.

Compared to the 1995 emission guidelines for large and small MWC units, these proposed emission guidelines have identical requirements for all small MWC units except for Class B units. The requirements for the Class A and Class C units remain the same as the 1995 requirements, except that the nitrogen oxides emission limit for Class A units has been changed to reflect revised MACT floors.

A. How Has the Conversion to Plain Language Affected These Emission Guidelines?

These proposed emission guidelines are organized and written in the plain language style. This style has not affected the content of these proposed emission guidelines when compared to the 1995 emission guidelines. However, it has changed their appearance. The EPA considers the question and answer format of the plain language style to be more user friendly and understandable to all audiences when compared with previous rules that were not written in this style.

The question and answer format that is used in the regulatory text for this proposal significantly minimizes cross-referencing within these emission guidelines. Additionally, these proposed emission guidelines have been drafted as a stand-alone subpart without the cross-referencing to the NSPS required by the 1995 emission guidelines. To improve the presentation of these emission guidelines requirements, additional tables have been added.

B. How Has the Size Definition of the Small MWC Category Been Revised?

As a result of the 1997 court decision, both the upper and lower size definitions (cutoffs) have been changed so that the small MWC unit category is based on the capacity of an individual MWC unit rather than on the total capacity of the plant where an MWC unit is located. Additionally, English units of measure (tons per day capacity) are used instead of metric units of measure (megagrams per day capacity).

1. Upper Size Cutoff

The upper size cutoff for small MWC units is proposed as 250 tons per day on a unit capacity basis. In the 1995 emission guidelines, the upper size cutoff was 225 megagrams per day (approximately 248 tons per day) based on total plant capacity. This revised upper size cutoff is consistent with the 1997 court ruling.

2. Lower Size Cutoff

The lower size cutoff for small MWC units is proposed as 35 tons per day on a unit capacity basis. In the 1995 emission guidelines, the lower size cutoff for small MWC units was 35 megagrams per day (approximately 39 tons per day) based on total plant capacity. In this proposal, the lower size cutoff has been changed to a unit capacity basis to make both the upper size cutoff and lower size cutoff based on a unit capacity basis (Docket No. A–98–18).

C. How has the Population of Small MWC Units Been Subcategorized?

These proposed emission guidelines retain the use of aggregate plant capacity to subcategorize small MWC units.

After first dividing the MWC unit population into units above 250 tons per day (large units) and units less than 250 tons per day (small units), the court's decision allowed EPA to:

> * * * exercise its discretion to distinguish among units within a category and create subcategories of small units, for which it can then calculate MACT floors and standards separately.

Thus, the court allowed EPA to subcategorize by unit location (aggregate plant capacity) at its discretion. The EPA has elected to retain the subcategorization used in the 1995 emission guidelines. Therefore, today's proposal establishes separate subcategories for small MWC units at: (1) Facilities with aggregate plant capacities greater than 250 tons per day (Davis class units), and (2) facilities with aggregate plant capacities less than or equal to 250 tons per day (non-Davis class units).

The EPA has noted that design and operational characteristics of refractory-type units are noticeably different than those of nonrefractory-type units. Further analysis of MWC unit operation showed that refractory-type MWC units generate approximately 50 percent more flue gas (exhaust) per ton of waste burned than nonrefractory-type MWC units. Higher levels of excess combustion air are used with refractory units by design to avoid overheating the refractory walls (Docket No. A–98–18). Because of this technical difference, EPA has elected to subdivide the Davis class units into a Davis refractory-type class and a Davis nonrefractory-type class.

In summary, today's proposal divides the small MWC unit population into three classes. Class A comprises small nonrefractory-type MWC units located at plants with an aggregate plant capacity greater than 250 tons per day of MSW. Class B comprises small refractory-type MWC units located at plants with an aggregate plant capacity greater than 250 tons per day of MSW. Class C comprises all small MWC units located at plants with an aggregate plant capacity less than or equal to 250 tons per day of MSW.

D. What are the Proposed Emission Limits?

1. Summary of the Proposed Emission Limits for Small MWC Units

To propose emission limits for small MWC units, EPA had to recalculate the MACT floors to account for changes in the small MWC unit definition (from a plant basis to a unit basis and from metric units of measure to English units) and the establishment of the three MWC unit subcategories. After establishing the MACT floor for each pollutant in each small MWC unit subcategory, EPA considered the cost, nonair quality health and environmental impacts, and energy requirements associated with any alternatives more stringent than the MACT floor in selecting MACT for each pollutant.

For each of the three MWC unit subcategories (Classes A, B, and C), EPA is proposing emission limits for organics (dioxins/furans), metals (cadmium, lead, mercury, particulate matter, and opacity), and acid gases (sulfur dioxide and hydrogen chloride). In addition, a nitrogen oxides emission limit is proposed for Class A units.

The emission limits proposed for Class A and Class C units are identical to those promulgated in the 1995 emission guidelines for large and small MWC plants, respectively, except that the nitrogen oxides emission limit for Class A units has changed to reflect the revised MACT floor. The emission limits proposed today for the Class B units are less stringent than those contained in the 1995 emission guidelines for large MWC plants.

2. Summary of the MACT Floor for Small MWC Units

To calculate the MACT floors, the small MWC unit population had to first be subdivided. This was done by modifying the MWC unit population in the 1995 MWC inventory database to: (1) Incorporate the 45 Davis class MWC units into the small MWC unit category, and (2) assign those 45 units to the Class A or Class B subcategories. The remaining small MWC units originally in the 1995 MWC inventory database are Class C units.

After establishing the small MWC unit population in each of the three classes, the MACT floors were calculated using a similar method and the same emissions data that were used to calculate the MACT floors for the 1995 emission guidelines. In summary, the MACT floor for each pollutant in each of the three classes was determined by: (1) Identifying the most stringent emission limitations achieved by the small MWC units, and (2) calculating the average emission limitation of the best performing 12 percent of units in each class. In identifying the most stringent emission limitations achieved by small MWC units, EPA relied on permit limits. Where EPA did not have permit information for a sufficient number of units to account for 12 percent of the units in a particular class, EPA used an uncontrolled default emission value based on AP–42 emission factors and test data to account for the additional number of units necessary to represent 12 percent of the units in the class. The default values were also used for a small MWC unit if: (1) The unit was not in compliance with its permit; or (2) the unit had a permit limit value higher than typical uncontrolled emissions from small MWC units. The EPA believes the uncontrolled default emission values used are a reasonable surrogate for actual data for the following reasons. First, EPA made an exhaustive effort to obtain permit information for each small MWC unit. Some small MWC units did not have permits, while others had permits which did not contain emission limitations for one or more of the pollutants specified in section 129. The EPA believes that it is reasonable to assume that uncontrolled emission values reasonably reflect actual emissions for such units. Second, EPA believes that the uncontrolled emission default values used reasonably reflect uncontrolled emissions for small MWC units. The MACT floor development for this proposal is discussed in more detail in ''Determination of the Maximum Achievable Control Technology (MACT) Floor for Small Municipal Waste Combustion Units'' (Docket No. A–98–18), the September 1995 EPA report ''Municipal Waste Combustion: Background Information Document for Promulgated Standards and Guidelines—Public Comments and Responses'' (EPA–453/R–95–013b), and the 1994 proposal preamble (59 FR 48228).

3. Emission Limits for Class A Units

Class A units in this proposal are nonrefractory Davis class units that were in the large MWC plant population in the 1995 emission guidelines. Table 1 presents the MACT floor emission levels for Class A units.

TABLE 1.—MACT FLOOR EMISSION LEVELS FOR CLASS A MWC UNITS

Pollutant [a]	MACT floor
Dioxins/furans (ng/dscm) [b]	1000
Cadmium (mg/dscm)	0.45
Lead (mg/dscm)	1.0
Mercury (mg/dscm)	0.37
Particulate matter (mg/dscm)	34
Sulfur dioxide (ppmv)	50
Hydrogen chloride (ppmv)	50
Nitrogen oxides (ppmv)	171

[a] All concentrations are corrected to 7 percent oxygen.
[b] Total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

The EPA has concluded that a SD/FF/CI/SNCR air pollution control system is needed to achieve the MACT floor emission levels for sulfur dioxide, hydrogen chloride, mercury, nitrogen oxides, and particulate matter presented in table 1. This is the same air pollution control technology that served as the basis of these emission guidelines promulgated in 1995 for large MWC plants. This air pollution control technology would also provide substantial reductions of dioxins/furans, cadmium, and lead. Therefore, EPA is proposing the same emission limits for Class A units for all pollutants, except nitrogen oxides, as those promulgated for large MWC plants in the 1995 emission guidelines.

The EPA is proposing a single emission limit for nitrogen oxides of 171 ppmv. Unlike the emission limits promulgated in 1995 that had separate nitrogen oxides limits for each different combustion unit design type (e.g., mass burn waterwall, fluidized bed combustor, mass burn rotary waterwall), EPA is proposing one nitrogen oxides emission limit for all combustion unit design types within Class A. This proposed nitrogen oxides emission limit is the MACT floor emission level. The EPA has concluded that this limit could be achieved with the same control technology (SNCR) that served as the basis of the nitrogen oxides emission limits for large MWC plants in 1995 (Docket No. A–90–45). This single nitrogen oxides emission limit also simplifies these emission guidelines. Table 2 presents the proposed emission limits for Class A units.

TABLE 2.—EMISSION LIMITS FOR CLASS A MWC UNITS

Pollutant [a]	Emission limit
Dioxins/furans (ng/dscm) [b]	30/60 [c]
Cadmium (mg/dscm)	0.04
Lead (mg/dscm)	0.49
Mercury (mg/dscm)	0.08 (or 85-percent reduction)
Particulate matter (mg/dscm).	27
Sulfur dioxide (ppmv)	31 (or 75-percent reduction)
Hydrogen chloride (ppmv)	31 (or 95-percent reduction)
Nitrogen oxides (ppmv)	171

[a] All concentrations are corrected to 7 percent oxygen.
[b] Total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.
[c] The emission limit is 60 ng/dscm for MWC units using an electrostatic precipitator-based air pollution control system and is 30 ng/dscm for MWC units using a non-electrostatic precipitator-based air pollution control system.

The 1994 proposal preamble (59 FR 48228) provides thorough documentation of: (1) the capability of an SD/FF/CI/SNCR air pollution control system to meet the emission limits being proposed, and (2) the rationale for selection of these limits for Class A units.

4. Emission Limits for Class B Units

Class B units in this proposal are the refractory-type MWC units in the Davis class that were in the large MWC plant population for the 1995 emission guidelines. Table 3 presents the MACT floor emission levels for Class B units.

TABLE 3.—MACT FLOOR EMISSION LEVELS FOR CLASS B MWC UNITS

Pollutant [a]	MACT floor
Dioxins/furans (ng/dscm) [b]	123
Cadmium (mg/dscm)	1.2
Lead (mg/dscm)	1.8
Mercury (mg/dscm)	0.29
Particulate matter (mg/dscm)	34
Sulfur dioxide (ppmv)	55
Hydrogen chloride (ppmv)	200

[a] All concentrations are corrected to 7 percent oxygen.

[b] Total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

The EPA has concluded that a DSI/ESP/CI air pollution control system is needed to achieve the MACT floor emission levels for sulfur dioxide, hydrogen chloride, dioxins/furans, mercury, and particulate matter presented in table 3. Unlike the MACT floors for large MWC plants for the 1995 emission guidelines, which requires an air pollution control technology equivalent to a SD/ESP/CI or SD/FF/CI, it is not necessary to use this technology to meet these MACT floors for Class B units.

The EPA considered the feasibility of going beyond the MACT floor level of technology and proposing the same emission limits for Class B units as those for Class A units (i.e., emission limits based on SD/ESP/CI or SD/FF/CI technology). However, the refractory-type combustor design of Class B units is distinctly different from the nonrefractory-type design of Class A units. The design and operational characteristics of refractory and nonrefractory-type units were evaluated (Docket No. A–98–18). This evaluation demonstrated that refractory-type MWC units (Class B) generate approximately 50 percent more flue gas (exhaust volume) per ton of waste burned than nonrefractory-type MWC units (Class A). Higher levels of excess air are used in refractory-type units by design to avoid overheating the refractory walls. Large flue gas exhaust volume from refractory-type units result in more flue gas to be cleaned. Therefore, EPA does not believe it is reasonable to propose emission limits for Class B units based on SD/FF/CI or SD/ESP/CI technology.

For this reason, EPA proposes to set the emission limits for Class B units based on the MACT floor level control technology (DSI/ESP/CI). For dioxins/furans, particulate matter, sulfur dioxide, and hydrogen chloride, the proposed emission limits are the MACT floor emission levels. For cadmium, lead, and mercury, EPA is proposing emission limits that are more stringent than the MACT floor level but have been demonstrated to be achievable by DSI/ESP/CI technology. The emission limits for these three pollutants are the same as the limits in the 1995 emission guidelines for small MWC plants where DSI/ESP/CI technology was the basis of the MACT limits. The proposed emission limits for Class B units are summarized in table 4.

TABLE 4.—EMISSION LIMITS FOR CLASS B MWC UNITS

Pollutant [a]	Emission limit
Dioxins/furans (ng/dscm) [b]	123
Cadmium (mg/dscm)	0.1
Lead (mg/dscm)	1.6
Mercury (mg/dscm)	0.08 (or 85-percent reduction)
Particulate matter (mg/dscm).	34
Sulfur dioxide (ppmv)	55 (or 50-percent reduction)
Hydrogen chloride (ppmv)	200 (or 50-percent reduction)

[a] All concentrations are corrected to 7 percent oxygen.
[b] Total mass of tetra through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Thorough documentation of the capability of a DSI/ESP/CI system to meet these proposed emission limits is available in the 1994 proposal (59 FR 48228) and the document ''Municipal Waste Combustors—Background Information for Proposed Standards: Post-Combustion Technology Performance'' (Docket No. A–89–08). As in the 1995 emission guidelines for large refractory-type MWC units, no nitrogen oxides emission limit is proposed for Class B units (see the 1994 proposal preamble, 59 FR 48228).

5. Emission Limits for Class C Units

Class C units in this proposal are those units that were in the small MWC plant population in the 1995 emission guidelines. Table 5 presents the MACT floor emission levels for Class C units.

TABLE 5.—MACT FLOOR EMISSION LEVELS FOR CLASS C MWC UNITS

Pollutant [a]	MACT floor
Dioxins/furans (ng/dscm) [b]	837
Cadmium (mg/dscm)	1.2
Lead (mg/dscm)	23
Mercury (mg/dscm)	0.65
Particulate matter (mg/dscm)	91
Sulfur dioxide (ppmv)	85
Hydrogen chloride (ppmv)	291

[a] All concentrations are corrected to 7 percent oxygen.
[b] Total mass of tetra through octachlorinated dibenzo-p-dioxins and dibenzofurans.

The EPA has concluded that a DSI/ESP air pollution control system is needed to achieve the MACT floor emission levels for sulfur dioxide, hydrogen chloride, and particulate matter presented in table 5. This is the same air pollution control technology (DSI/ESP) used as the basis of the emission limits promulgated in 1995 for small MWC plants. This air pollution control technology would also provide substantial reductions in cadmium and lead. The MACT floor for mercury is at a level typical for units that are uncontrolled. As discussed in the 1994 proposal preamble (59 FR 48249), for units that would need a DSI/ESP system to meet MACT floor requirements, activated carbon injection could be added to a DSI/ESP system at a minimal incremental cost. The addition of a CI air pollution control system would provide substantial reductions in dioxins/furans and mercury. The EPA considers that the cost to install CI is reasonable given the potential health effects associated with the bioaccumulation of mercury in the environment and the toxic nature of dioxins/furans. Therefore, EPA is proposing the same emission limits for Class C units as those promulgated for small MWC plants in the 1995 emission guidelines as MACT. These emission limits reflect MACT performance and are based on the performance of a DSI/ESP/CI air pollution control technology. Table 6 presents the proposed emission limits for Class C units.

TABLE 6.—EMISSION LIMITS FOR CLASS C MWC UNITS

Pollutant [a]	Emission limit
Dioxins/furans (ng/dscm) [b]	125
Cadmium (mg/dscm)	0.1
Lead (mg/dscm)	1.6
Mercury (mg/dscm)	0.08 (or 85-percent reduction)
Particulate matter (mg/dscm).	70
Sulfur dioxide (ppmv)	80 (or 50-percent reduction)
Hydrogen chloride (ppmv)	250 (or 50-percent reduction)

[a] All concentrations are corrected to 7 percent oxygen.
[b] Total mass of tetra through octachlorinated dibenzo-p-dioxins and dibenzofurans.

These proposed emission limits are identical to those promulgated in the 1995 emission guidelines for small MWC units. Because of this, the 1994 proposal preamble (59 FR 48228) provides thorough documentation of: (1) The capability of a DSI/ESP/CI system to meet the emission limits being proposed, and (2) the rationale for selection of these limits for Class C units. As in the 1995 emission guidelines for small MWC units, no nitrogen oxides emission limit is proposed for Class C units.

E. Have Carbon Monoxide Emission Limits Been Revised for Fluidized Bed Combustion Units That Cofire Wood and Refuse-derived Fuel?

The EPA has concluded that another MWC unit category should be established for carbon monoxide emission limits. Fluidized bed combustion units that burn a mixture of wood and RDF have exhibited higher variations in carbon monoxide than expected.

The EPA conducted an analysis of carbon monoxide data from a fluidized bed combustion unit that burns a mixture of wood and RDF and has incorporated good combustion practice modifications (Docket No. A–98–18). The EPA has determined that an additional carbon monoxide emission limit would be appropriate for cofired fluidized bed combustion units. Based on this analysis, EPA observed that a long-term average carbon monoxide emission level of less than 100 ppmv can be achieved and a carbon monoxide emission limit for this combustion unit type of 200 ppmv (24-hour average) would be appropriate. The carbon monoxide data used to establish this new carbon monoxide emission limit were compared with dioxin/furan emission tests conducted on this same MWC unit following the good combustion practice modifications. This comparison showed that fluidized bed combustion units burning wood and RDF and applying good combustion practices emit carbon monoxide up to 200 ppmv, and substantial dioxin/furan emission reductions are achieved by good combustion practices at these carbon monoxide levels.

F. Have Any Changes Been Made to the Operator Certification Requirements?

One change is proposed for the operator certification section of the good combustion practice requirements since the 1995 guidelines. In response to questions since the 1995 emission guidelines were promulgated, EPA has clarified what actions an MWC unit owner must take to continue operating an MWC unit during times when the certified chief facility operator and certified shift supervisor must be temporarily offsite for an extended period of time and there are no other certified chief facility operators or certified shift supervisors onsite. The EPA has addressed this issue by adding specific requirements for MWC units when the certified chief facility operator and certified shift supervisor must be offsite. Different requirements apply depending on the length of time the certified chief facility operator and certified shift supervisor must be offsite. These changes have been added to § 60.1685 of these proposed emission guidelines.

G. Have Any Changes Been Made to the Operating Practice Requirements?

One change is proposed for the operating practice requirements since the 1995 guidelines. The EPA has clarified how the required level of carbon feed rate is established and how the required monitoring parameter and quarterly carbon usage are used to determine compliance with the operating practice requirements. As discussed below, this results in two enforceable requirements for carbon feed rate.

As in the 1995 emission guidelines, the MWC plant owner must select an operating parameter (e.g., screw feeder speed) that can be used to calculate carbon feed rate. During each dioxin/furan and mercury stack test, the total amount of carbon used during each stack test must be measured. The total amount of carbon used during the test is divided by the duration (hours) of the stack test to give an average carbon feed rate in kilograms (or pounds) per hour. The MWC plant owner must also monitor the selected operating parameter during each dioxin/furan and mercury stack test and record the average operating parameter level. After the dioxin/furan and mercury stack tests are complete, the MWC owner must establish a relationship between the selected operating parameter and the measured carbon feed rate so that the selected parameter can be used to calculate the carbon feed rate. The selected operating parameter must then be continuously monitored during MWC unit operation and used to calculate the carbon feed rate. The calculated carbon feed rate cannot fall below the carbon feed rate measured during the dioxin/furan or mercury stack test (depending on which test establishes the higher carbon feed rate).

The 1995 emission guidelines did not clearly specify an averaging time for calculating the carbon feed rate. Because the baseline carbon feed rate is established as the average feed rate during the annual dioxin/furan or mercury stack test, EPA is clarifying that the averaging time used for monitoring this feed rate (using parametric data) should be of similar duration. Therefore, EPA is proposing an 8-hour block averaging period for monitoring carbon feed rates. This would allow facilities to compensate for interruptions in carbon feed rates (due to calibration, malfunction, or repair) by offsetting the interruption with an increase in carbon feed rates within the 8-hour averaging period.

The quarterly carbon usage requirements in the 1995 emission guidelines have also been revised and clarified. The EPA is proposing that MWC plant owners calculate required plantwide carbon usage on a quarterly basis and compare this required level of carbon usage to the actual amount of carbon purchased and delivered to the MWC plant. After an average carbon feed rate is established for an MWC unit based on the most recent dioxin/furan or mercury stack test, the required quarterly carbon usage level for the MWC unit is calculated by multiplying the kilogram (or pound) per hour rate by the number of operating hours for each quarter. Next, the required quarterly carbon usage for the plant is calculated by summing the carbon usage value for each small MWC unit located at the plant.

The MWC plant owner must then compare the required quarterly carbon usage level, based on the carbon usage during the stack test and the hours of operation, with the amount of carbon purchased and delivered to the MWC plant. The MWC plant owner must demonstrate that they are using the required amount of carbon during each quarter. This comparison is done on a plant basis rather than a unit basis because MWC units typically use a common carbon storage system; therefore, purchase, delivery, and usage are best tracked on a plant basis. If a plant does not meet the quarterly carbon usage requirement, all units at the plant would be considered out of compliance.

An MWC plant owner can choose to track quarterly carbon usage on an MWC unit basis if that is practical at the plant. The required quarterly carbon usage for each individual unit would then be compared to the carbon purchased and delivered to that unit. In this case, if an MWC unit does not meet the quarterly carbon usage requirement, only the one MWC unit, instead of the entire MWC plant, would be considered out of compliance.

H. Have any Changes Been Made to the Monitoring and Stack Testing Requirements?

No changes are proposed to the monitoring and stack testing requirements contained in the 1995 guidelines. However, to clarify differences between stack testing and continuous emission monitoring system requirements, these two topics have been divided into separate sections within these proposed guidelines.

The nitrogen oxides trading and averaging provisions that were included

in the 1995 emission guidelines are not included in this proposal. No large MWC units have used the trading and averaging provisions provided in the subpart Cb emission guidelines for large MWC units. Therefore, EPA does not anticipate that any small MWC units will use the nitrogen oxides trading and averaging provisions. Furthermore, the majority of small MWC units affected by this proposed subpart would not have nitrogen oxides emission limits and therefore, would not need trading and averaging provisions.

I. Have any Changes Been Made to the Recordkeeping and Reporting Requirements?

No changes are proposed to the recordkeeping and reporting requirements since the 1995 emission guidelines. However, consistent with the proposed changes in subpart B contained in this proposal, a reduction in the number of increments of progress reporting requirements for Class C small MWC units would occur.

This change affects the number of increments of progress required for State plans under subpart B of this part. Subpart B generally requires specific milestone dates and notification for five increments of progress when compliance will take longer than 12 months. For Class C units, EPA is proposing a requirement of only two increments of progress: submittal of a control plan and final compliance. For Class C units, the other three increments of progress are not appropriate or necessary to ensure progress toward compliance. Reducing the number of increments required for Class C units reduces the reporting and recordkeeping burden on smaller facilities. Section VI of this preamble, ''Amendments to Subpart B,'' addresses the subpart B revision.

Furthermore, EPA is proposing one minor change to clarify recordkeeping and reporting of: (1) 8-hour average calculated carbon feed rate, and (2) quarterly amounts of carbon purchased and delivered. These changes make the recordkeeping and reporting sections consistent with the operating practice requirements described above in section III.G.

IV. What Would Be the Impacts of These Proposed Emission Guidelines?

This section describes the impacts (i.e., air, water, solid waste, energy, cost, and economic impacts) of these proposed emission guidelines for small MWC units. The impact analysis conducted to evaluate the 1995 emission guidelines is available at 59 FR 48228. The discussion in this section focuses only on the air, cost, and economic impacts of these proposed emission guidelines.

In the preamble for the 1995 emission guidelines, EPA determined that the water, solid waste, and energy impacts associated with these proposed emission guidelines were not significant. Today's proposal affects only a subset of the MWC units that were addressed in the earlier impact analysis. Again, EPA has concluded that the water, solid waste, and energy impacts associated with today's proposal would not be significant.

For further information on the impacts of these proposed emission guidelines, refer to the document entitled ''Economic Impact Analysis: Small Municipal Waste Combustor—Section 111/129 Emission Guidelines and New Source Performance Standards'' (Docket No. A–98–18).

A. Air Impacts

The national air emission reductions that would result from full implementation of these emission guidelines compared to current estimated national emission levels have been calculated. Table 7 summarizes these air emission reductions and the percentage change in emissions relative to current baseline levels associated with the full implementation of these proposed emission guidelines for small MWC units.

TABLE 7. NATIONAL AIR EMISSION IMPACTS OF THESE EMISSION GUIDELINES FOR SMALL MWC UNITS

Pollutant	Air emission reduction	Percent change from 1998 baseline emission level [a]
Dioxins/furans [b].	2.7 kg/year	97
Cadmium	309 kg/year ...	84
Lead	12.7 Mg/year	91
Mercury	4.1 Mg/year ...	95
Particulate matter.	351 Mg/year ..	73
Sulfur dioxide	1,196 Mg/year	49
Hydrogen chloride.	2,390 Mg/year	85
Nitrogen oxides.	384 Mg/year ..	9

[a] Percent national emission reduction relative to national baseline emissions that would occur in the absence of these emission guidelines.

[b] Total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

B. Cost and Economic Impacts

The EPA estimates that 90 small MWC units located at 41 plants would be affected by these proposed emission guidelines. The total MSW combustion capacity of these 90 units is 8,551 tons per day. Of these 90 units, 69 percent are owned by city or county governments, 29 percent are owned by private businesses, and 2 percent are owned by nonprofit organizations.

To estimate the cost impacts of the proposed guidelines, EPA has taken into account all of the existing control equipment currently in operation at small MWC units. The cost estimates presented here, which are in 1997 dollars, are incremental costs over the control equipment already in use. The method used to estimate the cost and economic impacts of today's proposal is similar to the method used in the 1995 emission guidelines. For more details on the cost and economic analysis, refer to the impact analysis in the document entitled ''Economic Impact Analysis: Small Municipal Waste Combustor—Section 111/129 Emission Guidelines and New Source Performance Standards'' (Docket No. A–98–18).

The total annual cost (including annualized capital and operating costs) of these proposed emission guidelines would be approximately $50 million, which is equivalent to $18.75 per ton of MSW combusted. The total nationwide cost is approximately one-tenth of the nationwide cost that was estimated for both large and small MWC units for the 1995 emission guidelines. This is because most of the impacts of the 1995 emission guidelines were associated with large MWC units and because there has been a decrease in the small MWC population.

V. Companion Proposal for New Small MWC Units

A companion proposal to these proposed emission guidelines is being published in today's **Federal Register** to establish NSPS for new small MWC units. Following promulgation, the NSPS for new small MWC units will be contained in 40 CFR part 60, subpart AAAA.

VI. Amendments to Subpart B

Also included in today's **Federal Register** is a proposal to amend subpart B of this part, ''Adoption and Submittal of State Plans for Designated Facilities.'' Subpart B establishes procedures that are used in developing State plans and Federal plans to implement section 111(d) emission guidelines for existing facilities. Subpart B would be used to develop State plans implementing the subpart BBBB emission guidelines proposed today for small MWC units. The EPA is proposing two amendments to subpart B.

The first amendment addresses compliance schedules for designated facilities. The amendment affects the increments of progress requirements specified in § 60.24(e)(1) of subpart B of 40 CFR part 60. The EPA is adding the following language to the increments of progress requirements: ''unless otherwise specified in the applicable subpart.'' The purpose of this amendment is to allow EPA subpart-specific discretion in the number of increments of progress that a designated facility must meet. The intent of the increments of progress is to ensure designated facilities make continued progress toward meeting the compliance schedules established in these emission guidelines for the source category. Emission guidelines that have been implemented through subpart B include those for sulfuric acid plants, large MWC units, medical waste incinerators, and municipal solid waste landfills.

Currently, subpart B requires designated facilities to meet five increments of progress during their air pollution control device retrofit. The following five increments, with dates, must be addressed for the following activities: (1) submitting control plans, (2) awarding contracts, (3) initiating onsite construction, (4) completing onsite construction, and (5) final compliance.

For some categories of designated facilities, such as large MWC units, the five increments are appropriate. Large MWC units must develop site-specific control plans. Retrofit of controls is normally associated with large onsite field-erected construction projects. Although the current subpart B increments are appropriate for large MWC units, they are inappropriate for smaller MWC units. Most small Class C MWC units will achieve compliance by installing preconstructed modular control systems. When a control system for a small MWC unit is ordered from a vendor and then delivered, installation is relatively quick without extensive onsite construction. This is different from a complex retrofit where detailed site-specific planning, multiple contracts, and months of onsite construction are required to complete the retrofit. Therefore, EPA believes that establishing and reporting five increments of progress is overly burdensome for small Class C MWC units and is not necessary to ensure compliance. Other source categories covered by future emission guidelines may experience similar situations where some of the five increments of progress are also not appropriate. Therefore, EPA is proposing to allow subpart-specific flexibility in establishing increments of progress for a particular subpart.

The proposed second amendment to subpart B addresses the public hearing requirements specified in § 60.27(f) of subpart B of 40 CFR part 60. The EPA is proposing additional text to clarify that EPA will hold a public hearing for Federal plan development just as a State holds a public hearing for State plan development.

The purpose of this revision is to clarify how the public hearing requirements apply if EPA is developing a Federal plan for designated facilities in States that did not develop approvable State plans. If State regulatory authorities are developing a plan that affects designated facilities in their States, § 60.23(c)(1) of subpart B of 40 CFR part 60 requires at least one public hearing per State (a State has the discretion to hold more than one hearing). The proposed revisions would clarify that EPA must conduct at least one public hearing for the Federal plan (EPA will also have the discretion to hold more than one public hearing).

VII. Administrative Requirements

A. Public Hearing

In accordance with section 307(d)(5) of the Clean Air Act, EPA will hold a public hearing if individuals request to speak. If a public hearing is held, EPA may ask clarifying questions during the oral presentation but will not respond to the presentations or comments. To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each. Any member of the public may submit written comments (see the **DATES** and **ADDRESSES** sections). The EPA will consider written comments and supporting information with equivalent weight as any oral statement and supporting information presented at a public hearing.

B. Docket

The docket is an organized and complete file of the administrative record compiled by EPA in the development of this proposal. Material is added to the docket throughout the rule development process. The principal purposes of the docket are: (1) to allow members of the public to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review except for interagency review material. The docket numbers for these emission guidelines are Docket No. A–98–18 and associated Docket Nos. A–90–45 and A–89–08, which have been incorporated by reference into Docket No. A–98–18.

C. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113), all Federal agencies are required to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards for use in process and emissions monitoring. The search for emissions monitoring procedures identified 20 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing available standards, EPA determined that 12 of the candidate consensus standards identified for measuring emissions of pollutants or surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data, and other important technical and policy considerations. Eight of the remaining candidate consensus standards are new standards under development that EPA plans to follow, review and consider adopting at a later date.

One consensus standard, ASTM D6216–98, appears to be practical for EPA use in lieu of EPA Performance Specification 1 (40 CFR part 60, appendix B). On September 23, 1998, EPA proposed incorporating by reference ASTM D6216–98 under a separate rulemaking (63 FR 50824) that would allow broader use and application of this consensus standard. The EPA plans to complete this action in the near future. For these reasons, EPA does not propose in these emission guidelines to adopt D6216–98 in lieu of PS–1 requirements as it would be impractical for EPA to act independently from separate rulemaking activities already undergoing notice and comment.

The EPA solicits comment on proposed emission monitoring

requirements proposed in these emission guidelines and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why this regulation should incorporate these voluntary consensus standards, in lieu of EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR part 63, appendix A was used).

The EPA also conducted searches to identify voluntary consensus standards for process monitoring and process operation. Candidate voluntary consensus standards for process monitoring and process operation were identified for: (1) MWC unit load level (steam output), (2) designing, constructing, installing, calibrating, and using nozzles and orifices, and (3) MWC plant operator certification requirements.

One consensus standard by the ASME was identified for use in these proposed emission guidelines for measurement of MWC unit load level (steam output). The EPA believes this standard is practical to use in these proposed emission guidelines as the method to measure MWC unit load. The EPA takes comment on the incorporation by reference of ''ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991)'' in the proposed guidelines.

A second consensus standard by ASME was identified for use in these proposed emission guidelines for designing, constructing, installing, calibrating, and using nozzles and orifices. The EPA believes this standard is practical to use in these proposed emission guidelines for the design, construction, installation, calibration, and use of nozzles and orifices. The EPA takes comment on the incorporation by reference of ''American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters'', 6th edition (1971).

A third consensus standard by ASME (QRO–1–1994) was identified for use in these proposed emission guidelines for MWC plant operator certification requirements instead of developing new operator certification procedures. The EPA believes this standard is practical to use in these proposed emission guidelines that require a chief facility operator and shift supervisor to successfully complete the operator certification procedures developed by ASME.

Tables 6, 7, and 8 of these proposed emission guidelines list the EPA testing methods and performance standards included in the proposed regulations. Most of these standards have been used by States and industry for more than 10 years. Nevertheless, under § 60.8 of 40 CFR part 60, subpart A, the proposal also allows any State or source to apply to EPA for permission to use an alternative methods in place of any of the EPA testing methods or performance standards listed in Tables 6, 7, and 8.

D. Paperwork Reduction Act

The EPA submitted the information collection requirements (ICR) in these proposed emission guidelines to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA prepared an ICR document (ICR No. 1900.01.01) and a copy may be obtained from Sandy Farmer by mail at the OP, Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460, by e-mail at ''farmer.sandy@epamail.epa.gov'' or by calling (202) 260–2740. A copy may also be downloaded off the Internet at ''http://www.epa.gov/icr''.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA (ICR Tracking No. 1900.01).'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 30, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by September 29, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

The information would be used by the Agency to ensure that the small MWC unit requirements are implemented properly and are complied with on a continuous basis. Records and reports are necessary to enable EPA to identify small MWC units that may not be in compliance with these emission guidelines. Based on reported information, EPA would decide which small MWC units should be inspected and what records or processes should be inspected. The records that owners and operators of small MWC units maintain would indicate to EPA whether personnel are operating and maintaining control equipment properly.

These proposed emission guidelines are projected to affect approximately 90 small MWC units located at 41 plants. The estimated average annual burden for industry for the first 3 years after promulgation of these emission guidelines would be 1,297 person-hours annually. There will be no capital costs for monitoring or recordkeeping during the first 3 years. The estimated average annual burden, over the first 3 years, for the implementing agency would be 773 hours with a cost of $30,869 (including travel expenses) per year.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act

Section 605 of the RFA (5 U.S.C. 601 *et seq.*) requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. In 1996, the SBREFA amended the RFA to strengthen the RFA's analytical and procedural requirements and to establish a new mechanism for expedited congressional review. The major purpose of these Acts is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated without compromising the objectives of

the Clean Air Act. If a regulation is likely to have a significant economic impact on a substantial number of small entities, the EPA may give special consideration to those small entities when analyzing regulatory alternatives and drafting the regulation. Under these Acts, EPA must generally prepare a regulatory flexibility analysis for a rule subject to notice and comment rulemaking procedures unless the EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

Pursuant to the provisions of 5 U.S.C. 605(b), the EPA certifies that today's proposed emission guidelines will not have a significant economic impact on a substantial number of small entities. The EPA conducted a regulatory flexibility analysis that shows eight existing small MWC units (operated by one small business and seven small governments) that would be subject to these emission guidelines are considered ''small entities'' according to the Small Business Administration's definitions for the affected industries. Also in the initial analysis, EPA calculated compliance costs as a percentage of sales for business and a percentage of income (total household income) for the relevant population of owning governments for the MWC units that are considered small entities. The estimated annual compliance cost as a percentage of income is 0.03 percent for the seven small potentially affected government entities and 39 percent for the one small business. For the seven potentially affected government entities, the maximum compliance cost was 0.25 percent. None of the governmental impacts are considered significant. The impact on the one small business is considered significant but one small business is not a substantial number of entities.

Based on the results of the initial analysis, EPA concluded that these emission guidelines do not have a significant economic impact on a substantial number of small entities. Therefore, it is not necessary to prepare a final regulatory flexibility analysis.

F. Unfunded Mandates Reform Act

Title II of the 1995 UMRA, Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 allow EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these proposed emission guidelines do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The economic impact analysis (Docket No. A–98–18) shows that the total annual costs of these proposed emission guidelines is about $50 million per year (in 1997 dollars), starting on the fifth year after the rule is promulgated. Thus, today's proposed emission guidelines are not subject to the requirements of sections 202 and 205 of the UMRA. Although these emission guidelines are not subject to UMRA, EPA did prepare a cost-benefit analysis under section 202 of the UMRA for the 1995 emission guidelines. For a discussion of how EPA complied with the UMRA for the 1995 emission guidelines, including its extensive consultations with State and local governments, see the preamble to the 1995 emission guidelines (60 FR 65405–65412, December 19, 1995). Because today's proposed emission guidelines are functionally equivalent to the 1995 emission guidelines, no additional consultations were necessary.

G. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant,'' and therefore, subject to OMB review and the requirements of this Executive Order. The Executive Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA considers these emission guidelines proposed today to be ''not significant'' because these guidelines will not have an annual effect on the economy of $100 million or more and do not impose any additional control requirements above the 1995 emission guidelines. The EPA considered the 1995 emission guidelines to be ''significant'' because the 1995 guidelines were expected to have an annual effect on the economy in excess of $100 million. The EPA submitted the 1995 emission guidelines to OMB for review (60 FR 65405, December 19, 1995). However, these emission guidelines proposed today are projected to have an impact of approximately $50 million annually (Docket No. A–98–18). Therefore, these proposed emission guidelines are considered to be ''not significant'' under Executive Order 12866 and will not be submitted to OMB for review.

H. Executive Order 12875—Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to

OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

The EPA has concluded that these emission guidelines may create a mandate on a number of city and county governments, and the Federal government would not provide the funds necessary to pay the direct costs incurred by these city and county governments in complying with the mandate. However, today's proposed emission guidelines do not impose any additional costs or result in any additional control requirements above those considered during promulgation of the 1995 emission guidelines. In developing the 1995 emission guidelines, EPA consulted extensively with State and local governments to enable them to provide meaningful and timely input in the development of those emission guidelines. Because these proposed emission guidelines are the same as those developed in 1995, these previous consultations still apply. For a discussion of EPA's consultations with State and local governments, the nature of the governments' concerns, and EPA's position supporting the need to issue these emission guidelines, see the preamble to the 1995 emission guidelines (60 FR 65405–65413, December 19, 1995).

I. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 directs Federal agencies to ''determine whether their programs, policies, and activities have disproportionately high adverse human health or environmental effects on minority populations and low-income populations'' (sections 3–301 and 3–302). In developing these emission guidelines for small MWC units, EPA analyzed environmental justice issues that could be relevant to this proposal.

An impact analysis was conducted to determine the distribution of minority and low-income groups in the surrounding area where MWC units are located in the United States. The EPA reviewed the demographic characteristics presented in this impact analysis (Docket No. A–90–45) and other analyses. The EPA concluded that there is no significant difference in ethnic makeup or income level in counties where MWC units are located when compared to the average ethnic and income levels of the respective States in which the units are located.

In addition, this proposal would reduce air emissions from small MWC units, thereby improving air quality, health, and the environment in areas where MWC units are located.

Therefore, EPA has concluded that this proposal would not have a disproportionately high adverse human health or environmental effect on minority populations or low-income populations.

J. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

These emission guidelines are not subject to Executive Order 13045 because they are not economically significant as defined in Executive Order 12866 and because they are based on technology performance and not on health and safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Therefore, the results of any such analysis would have no impact on the stringency decision.

K. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's emission guidelines do not significantly or uniquely affect the communities of Indian tribal governments. The EPA is not aware of any small MWC units located in Indian territory. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these emission guidelines.

L. Executive Memorandum on Plain Language in Government Writing

On June 1, 1998, President Clinton issued an Executive Memorandum entitled ''Plain Language in Government Writing,'' which instructs Federal agencies to use plain language in all proposed and final rulemakings by January 1, 1999. Therefore, these proposed emission guidelines are organized and written in a plain language format and style. The plain language format and style do not alter the content or intent of this proposal compared to the 1995 emission guidelines. The EPA considers this plain language format and style to be more user friendly and understandable to all audiences when compared with previous proposals that were not written in plain language.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Municipal waste combustion.

Dated: August 6, 1999.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60 of

the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7429, 7601, and 7602.

2. Section 60.24 of subpart B of part 60 is amended by revising paragraph (e)(1) to read as follows:

Subpart B—Adoption and Submittal of State Plans for Designated Facilities

§ 60.24 Emission standards and compliance schedules.

* * * * *

(e)(1) Any compliance schedule extending more than 12 months from the date required for submittal of the plan must include legally enforceable increments of progress to achieve compliance for each designated facility or category of facilities. Unless otherwise specified in the applicable subpart, increments of progress must include, where practicable, each increment of progress specified in § 60.21(h) and must include such additional increments of progress as may be necessary to permit close and effective supervision of progress toward final compliance.

* * * * *

3. Section 60.27 of subpart B of part 60 is amended by revising paragraph (f) to read as follows:

§ 60.27 Actions by the Administrator.

* * * * *

(f) Prior to promulgation of a plan under paragraph (d) of this section, the Administrator will provide the opportunity for at least one public hearing in either:

(1) Each State that failed to hold a public hearing as required by § 60.23(c); or

(2) Washington, DC or an alternate location specified in the **Federal Register**.

* * * * *

4. Part 60 is amended by adding a new subpart BBBB to read as follows:

Subpart BBBB—Emission Guidelines: Small Municipal Waste Combustion Units

Sec.

Introduction

§ 60.1500 What is the purpose of this subpart?

This subpart establishes emission guidelines and compliance schedules for the control of emissions from existing small municipal waste combustion units. The pollutants addressed by these emission guidelines are listed in tables 2, 3, 4, and 5 of this subpart. These emission guidelines are developed in accordance with sections 111(d) and 129 of the Clean Air Act and subpart B of this part.

§ 60.1505 Am I affected by this subpart?

(a) If you are the Administrator of an air quality program in a State or United States protectorate with one or more existing small municipal waste combustion units that commenced construction before August 30, 1999, you must submit a State plan to EPA that implements these emission guidelines contained in this subpart.

(b) You must submit the State plan to EPA within 1 year after the promulgation of this subpart.

§ 60.1510 Is a State plan required for all States?

No. You are not required to submit a State plan if there are no existing small municipal waste combustion units in your State and you submit a negative declaration letter in place of the State plan.

§ 60.1515 What must I include in my State plan?

(a) Include nine items:

(1) Inventory of affected municipal waste combustion units, including those that have ceased operation but have not been dismantled.

(2) Inventory of emissions from affected municipal waste combustion units in your State.

(3) Compliance schedules for each affected municipal waste combustion unit.

(4) Good combustion practices and emission limits for affected municipal waste combustion units that are at least as protective as these emission guidelines contained in this subpart.

(5) Stack testing, continuous emission monitoring, recordkeeping and reporting requirements.

(6) Transcript of the public hearing on the State plan.

(7) Provision for State progress reports to EPA.

(8) Identification of enforceable State mechanisms that you selected for implementing these emission guidelines of this subpart.

(9) Demonstration of your State's legal authority to carry out the section 111(d) and section 129 State plan.

(b) Your State plan can deviate from the format and content of these emission guidelines contained in this subpart. However, if your State plan does deviate, you must demonstrate that your State plan is as protective as these emission guidelines contained in this subpart. Your State plan must address regulatory applicability, increments of progress for retrofit, operator training and certification, operating practice, emission limits, continuous emission monitoring, stack testing, recordkeeping, reporting, and air curtain incinerator requirements.

(c) Follow the requirements of subpart B of this part in your State plan.

§ 60.1520 Is there an approval process for my State plan?

The EPA will review your State plan according to § 60.27 of subpart B of this part.

§ 60.1525 What if my State plan is not approvable?

If you do not submit an approvable State plan (or a negative declaration letter), EPA will develop a Federal plan, according to § 60.27 of subpart B of this part, to implement these emission guidelines contained in this subpart. Owners and operators of municipal waste combustion units not covered by an approved and currently effective State plan must comply with the Federal plan. The Federal plan is an interim action and, by its own terms, will cease to apply when your State plan is approved and becomes effective.

§ 60.1530 Is there an approval process for a negative declaration letter?

No. The EPA has no formal review process for negative declaration letters. Once your negative declaration letter has been received, EPA will place a copy in the public docket and publish a notice in the **Federal Register**. If, at a later date, an existing small municipal waste combustion unit is identified in your State, the Federal plan implementing these emission guidelines contained in this subpart will automatically apply to that municipal waste combustion unit until your State plan is approved.

§ 60.1535 What compliance schedule must I include in my State plan?

(a) Your State plan must include compliance schedules that require small municipal waste combustion units to achieve final compliance as expeditiously as practicable but not later than the earlier of two dates:

(1) Five years after [*the date of publication of the final rule*].

(2) Three years after the effective date of State plan approval.

(b) For compliance schedules longer than 1 year after the effective date of State plan approval, State plans must include two items:

(1) Dates for enforceable increments of progress as specified in § 60.1590.

(2) For Class A and Class B units (see definition in § 60.1940), dioxin/furan stack test results for at least one test conducted during or after 1990. The stack tests must have been conducted according to the procedures specified under § 60.1790.

(c) Class A and Class B units that commenced construction after June 26, 1987 must comply with the dioxin/furan and mercury limits specified in tables 2 and 3 of this subpart by the later of two dates:

(1) One year after the effective date of State plan approval.

(2) One year following the issuance of a revised construction or operation permit, if a permit modification is required.

§ 60.1540 Are there any State plan requirements for this subpart that apply instead of the requirements specified in subpart B?

Subpart B establishes general requirements for developing and processing section 111(d) plans. This subpart applies, instead of the requirements in subpart B of this part, for two items:

(a) *Option for case-by-case less stringent emission standards and longer compliance schedules.* State plans developed to implement this subpart must be as protective as these emission guidelines contained in this subpart. State plans must require all municipal waste combustion units to comply within 5 years after [publication date of final rule]. This requirement applies, instead of the option for case-by-case less stringent emission standards and longer compliance schedules in § 60.24(f) of subpart B of this part.

(b) *Increments of progress requirements.* For Class C units (see definition in § 60.1940), a State plan must include at least two increments of progress for the affected municipal waste combustion units. These two minimum increments are the final control plan submittal date and final compliance date in § 60.21(h)(1) and (5) of subpart B of this part. This requirement applies, instead of the requirement of § 60.24(e)(1) of subpart B of this part that would require a State plan to include all five increments of progress for all municipal waste combustion units. For Class A and Class B units under this subpart, the final control plan must contain the five increments of progress in § 60.24(e)(1) of subpart B of this part.

§ 60.1545 Does this subpart directly affect municipal waste combustion unit owners and operators in my State?

(a) No. This subpart does not directly affect municipal waste combustion unit owners and operators in your State. However, municipal waste combustion unit owners and operators must comply with the State plan you developed to implement these emission guidelines contained in this subpart. Some States may incorporate these emission guidelines contained in this subpart into their State plans by direct incorporation by reference. Others may include the model rule text directly in their State plan.

(b) All municipal waste combustion units must be in compliance with the requirements established in this subpart by 5 years after [*the date of publication of the final rule*], whether the municipal waste combustion unit is regulated under a State or Federal plan.

Applicability of State Plans

§ 60.1550 What municipal waste combustion units must I address in my State plan?

(a) Your State plan must address all existing small municipal waste combustion units in your State that meet two criteria:

(1) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(2) The municipal waste combustion unit commenced construction before August 30, 1999.

(b) If an owner or operator of a municipal waste combustion unit makes changes that meet the definition of modification or reconstruction after the date 6 months after [*the date of publication of the final rule*] for subpart AAAA of this part, the municipal waste combustion unit becomes subject to subpart AAAA of this part and the State plan no longer applies to that unit.

(c) If an owner or operator of a municipal waste combustion unit makes physical or operational changes to an existing municipal waste combustion unit primarily to comply with your State plan, subpart AAAA of this part (New Source Performance Standards for Small Municipal Waste Combustion Units) does not apply to that unit. Such changes do not constitute modifications or reconstructions under subpart AAAA of this part.

§ 60.1555 Are any small municipal waste combustion units exempt from my State plan?

(a) *Small municipal waste combustion units that combust less than 11 tons per day.* These units are exempt from your State plan if four requirements are met:

(1) The municipal waste combustion unit is subject to a federally enforceable permit limiting municipal solid waste combustion to less than 11 tons per day.

(2) You are notified by the owner or operator that the unit qualifies for this exemption.

(3) You receive from the owner or operator of the unit a copy of the federally enforceable permit.

(4) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(b) *Small power production units.* These units are exempt from your State plan if four requirements are met:

(1) The unit qualifies as a small power production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(3) You are notified by the owner or operator that the unit qualifies for this exemption.

(4) You receive documentation from the owner or operator that the unit qualifies for this exemption.

(c) *Cogeneration units.* These units are exempt from your State plan if four requirements are met:

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You are notified by the owner or operator that the unit qualifies for this exemption.

(4) You receive documentation from the owner or operator that the unit qualifies for this exemption.

(d) *Municipal waste combustion units that combust only tires.* These units are exempt from your State plan if three requirements are met:

(1) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can cofire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(2) You are notified by the owner or operator that the unit qualifies for this exemption.

(3) You receive documentation from the owner or operator that the unit qualifies for this exemption.

(e) *Hazardous waste combustion units.* These units are exempt from your State plan if the unit has received a permit under section 3005 of the Solid Waste Disposal Act.

(f) *Materials recovery units.* These units are exempt from your State plan if the unit combusts waste mainly to recover metals. Primary and secondary smelters may qualify for this exemption.

(g) *Cofired units.* These units are exempt from your State plan if four requirements are met:

(1) The unit has a federally enforceable permit limiting municipal solid waste combustion to 30 percent of the total fuel input by weight.

(2) You are notified by the owner or operator that the unit qualifies for this exemption.

(3) You receive from the owner or operator of the unit a copy of the federally enforceable permit.

(4) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(h) *Plastics/rubber recycling units.* These units are exempt from your State plan if four requirements are met:

(1) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined under ''Definitions'' (§ 60.1940).

(2) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(3) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(4) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(i) *Units that combust fuels made from products of plastics/rubber recycling plants.* These units are exempt from your State plan if two requirements are met:

(1) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(2) The unit does not combust any other municipal solid waste.

(j) *Cement kilns.* Cement kilns that combust municipal solid waste are exempt from your State plan.

(k) *Air curtain incinerators.* If an air curtain incinerator (see § 60.1940 for definition) combusts 100 percent yard waste, then these units must meet only the requirements under ''Model Rule—Air Curtain Incinerators That Burn 100 Percent Yard Waste'' (§§ 60.1910 through 60.1930).

§ 60.1560 Can an affected municipal waste combustion unit reduce its capacity to less than 35 tons per day rather than comply with my State plan?

(a) Yes, an owner or operator of an affected municipal waste combustion unit may choose to reduce, by your final compliance date, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste rather than comply with your State plan. They must submit a final control plan and the notifications of achievement of increments of progress as specified in § 60.1610.

(b) The final control plan must, at a minimum, include two items:

(1) A description of the physical changes that will be made to accomplish the reduction.

(2) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified under § 60.1935(d) and (e) to calculate the combustion capacity of a municipal waste combustion unit.

(c) A permit restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified under § 60.1935(d) and (e) to calculate the combustion capacity of a municipal waste combustion unit.

§ 60.1565 What subcategories of small municipal waste combustion units must I include in my State plan?

This subpart specifies different requirements for different subcategories of municipal waste combustion units. You must use these same three subcategories in your State plan. These three subcategories are based on aggregate capacity of the municipal waste combustion plant and the type of municipal waste combustor unit as follows:

(a) *Class A units.* These are nonrefractory-type small municipal waste combustion units that are located at municipal waste combustion plants with aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. (See the definition of municipal waste combustion plant capacity in § 60.1940 for specification of which units at a plant are included in the aggregate capacity calculation.)

(b) *Class B units.* These are refractory-type small municipal waste combustion units that are located at municipal waste combustion plants with aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. (See the definition of municipal waste combustion plant capacity in § 60.1940 for specification of which units at a plant are included in the aggregate capacity calculation.)

(c) *Class C units.* These are all small municipal combustion units that are located at municipal waste combustion plants with aggregate plant combustion capacity no more than 250 tons per day of municipal solid waste. (See the definition of municipal waste combustion plant capacity in § 60.1940 for specification of which units at a plant are included in the aggregate capacity calculation.)

Use of Model Rule

§ 60.1570 What is the purpose of the ''Model Rule'' in this subpart?

(a) The model rule provides these emission guidelines requirements in a standard regulation format. You must develop a State plan that is as protective as the model rule. You may use the

model rule language as part of your State plan. Alternative language may be used in your State plan if you demonstrate that the alternative language is as protective as the model rule contained in this subpart.

(b) In the model rule of §§ 60.1585 through 60.1905, ''you'' means the owner or operator of a small municipal waste combustion unit.

§ 60.1575 How does the model rule relate to the required elements of my State plan?

The model rule may be used to satisfy the State plan requirements specified in § 60.1515(a)(4) and (5). Alternatives may be used, but only if you can demonstrate that they are as protective as the model rule.

§ 60.1580 What are the principal components of the model rule?

The model rule contains five major components:

(a) Increments of progress toward compliance.
(b) Good combustion practices.
(1) Operator training.
(2) Operator certification.
(3) Operating requirements.
(c) Emission limits.
(d) Monitoring and stack testing.
(e) Recordkeeping and reporting.

Model Rule—Increments of Progress

§ 60.1585 What are my requirements for meeting increments of progress and achieving final compliance?

(a) *Class A and Class B units.* If you plan to achieve compliance more than 1 year following the effective date of State plan approval and a permit modification is not required, or more than 1 year following the date of issuance of a revised construction or operation permit if a permit modification is required, you must meet five increments of progress:

(1) Submit a final control plan.

(2) Submit a notification of retrofit contract award.

(3) Initiate onsite construction.

(4) Complete onsite construction.

(5) Achieve final compliance.

(b) *Class C units.* If you plan to achieve compliance more than 1 year following the effective date of State plan approval and a permit modification is not required, or more than 1 year following the date of issuance of a revised construction or operation permit if a permit modification is required, you must meet two increments of progress:

(1) Submit a final control plan.

(2) Achieve final compliance.

§ 60.1590 When must I complete each increment of progress?

Table 1 of this subpart specifies compliance dates for each of the increments of progress for Class A, B, and C units. (See § 60.1940 for definitions of classes.)

§ 60.1595 What must I include in the notifications of achievement of my increments of progress?

Your notification of achievement of increments of progress must include three items:

(a) Notification that the increment of progress has been achieved.

(b) Any items required to be submitted with the increment of progress (§§ 60.1610 through 60.1630).

(c) The notification must be signed by the owner or operator of the municipal waste combustion unit.

§ 60.1600 When must I submit the notifications of achievement of increments of progress?

Notifications of the achievement of increments of progress must be postmarked no later than 10 days after the compliance date for the increment.

§ 60.1605 What if I do not meet an increment of progress?

If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the specified date in table 1 of this subpart for achieving that increment of progress. This notification must inform the Administrator that you did not meet the increment. You must include in the notification an explanation of why the increment of progress was not met and your plan for meeting the increment as expeditiously as possible. You must continue to submit reports each subsequent month until the increment of progress is met.

§ 60.1610 How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must complete two items:

(a) Submit the final control plan, including a description of the devices for air pollution control and process changes that you will use to comply with the emission limits and other requirements of this subpart.

(b) You must maintain an onsite copy of the final control plan.

§ 60.1615 How do I comply with the increment of progress for awarding contracts?

You must submit a signed copy of the contracts awarded to initiate onsite construction, initiate onsite installation of emission control equipment, and incorporate process changes. Submit the copy of the contracts with the notification that this increment of progress has been achieved.

§ 60.1620 How do I comply with the increment of progress for initiating onsite construction?

You must initiate onsite construction and installation of emission control equipment and initiate the process changes outlined in the final control plan.

§ 60.1625 How do I comply with the increment of progress for completing onsite construction?

You must complete onsite construction and installation of emission control equipment and complete process changes outlined in the final control plan.

§ 60.1630 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must complete two items:

(a) Complete all process changes and complete retrofit construction as specified in the final control plan.

(b) Connect the air pollution control equipment with the municipal waste combustion unit identified in the final control plan and complete process changes to the municipal waste combustion unit so that if the affected municipal waste combustion unit is brought online, all necessary process changes and air pollution control equipment are operating as designed.

§ 60.1635 What must I do if I close my municipal waste combustion unit and then restart my municipal waste combustion unit?

(a) If you close your municipal waste combustion unit but will reopen it prior to the final compliance date in your State plan, you must meet the increments of progress specified in § 60.1585.

(b) If you close your municipal waste combustion unit but will restart it after your final compliance date, you must complete emission control retrofit and meet the emission limits and good combustion practices on the date your municipal waste combustion unit restarts operation.

§ 60.1640 What must I do if I plan to permanently close my municipal waste combustion unit and not restart it?

(a) If you plan to close your municipal waste combustion unit rather than comply with the State plan, you must submit a closure notification, including the date of closure, to the Administrator by the date your final control plan is due.

(b) If the closure date is later than 1 year after the effective date of State plan approval, you must enter into a legally binding closure agreement with the

Administrator by the date your final control plan is due. The agreement must specify the date by which operation will cease.

Model Rule—Good Combustion Practices: Operator Training

§ 60.1645 What types of training must I do?

There are two types of required training:

(a) Training of operators of municipal waste combustion units using the EPA or a State-approved training course.

(b) Training of plant personnel using a plant-specific training course.

§ 60.1650 Who must complete the operator training course? By when?

(a) Three types of employees must complete the EPA or State-approved operator training course:

(1) Chief facility operators.

(2) Shift supervisors.

(3) Control room operators.

(b) These employees must complete the operator training course by the later of three dates:

(1) One year after the effective date of State plan approval.

(2) Six months after your municipal waste combustion unit starts up.

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) The requirement in paragraph (a) of this section does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before the effective date of State plan approval.

(d) You may request that the EPA Administrator waive the requirement in paragraph (a) of this section for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before the effective date of State plan approval.

§ 60.1655 Who must complete the plant-specific training course?

All employees with responsibilities that affect how a municipal waste combustion unit operates must complete the plant-specific training course. Include at least six types of employees:

(a) Chief facility operators.

(b) Shift supervisors.

(c) Control room operators.

(d) Ash handlers.

(e) Maintenance personnel.

(f) Crane or load handlers.

§ 60.1660 What plant-specific training must I provide?

For plant-specific training, you must do four things:

(a) For training at a particular plant, develop a specific operating manual for that plant by the later of two dates:

(1) Six months after your municipal waste combustion unit starts up.

(2) One year after the effective date of State plan approval.

(b) Establish a program to review the plant-specific operating manual with people whose responsibilities affect the operation of your municipal waste combustion unit. Complete the initial review by the later of three dates:

(1) One year after the effective date of State plan approval.

(2) Six months after your municipal waste combustion unit starts up.

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) Update your manual annually.

(d) Review your manual with staff annually.

§ 60.1665 What information must I include in the plant-specific operating manual?

You must include 11 items in the operating manual for your plant:

(a) A summary of all applicable standards in this subpart.

(b) A description of the basic combustion principles that apply to municipal waste combustion units.

(c) Procedures for receiving, handling, and feeding municipal solid waste.

(d) Procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustion unit.

(e) Procedures for maintaining a proper level of combustion air supply.

(f) Procedures for operating the municipal waste combustion unit within the standards contained in this subpart.

(g) Procedures for responding to periodic upset or off-specification conditions.

(h) Procedures for minimizing carryover of particulate matter.

(i) Procedures for handling ash.

(j) Procedures for monitoring emissions from the municipal waste combustion unit.

(k) Procedures for recordkeeping and reporting.

§ 60.1670 Where must I keep the plant-specific operating manual?

You must keep your operating manual in an easily accessible location at your plant. It must be available for review or inspection by all employees who must review it and by the Administrator.

Model Rule—Good Combustion Practices: Operator Certification

§ 60.1675 What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?

(a) Each chief facility operator and shift supervisor must obtain and keep a current provisional operator certification from the American Society of Mechanical Engineers (QRO–1–1994 (incorporated by reference in § 60.17 of subpart A of this part)) or a current provisional operator certification from your State certification program.

(b) Each chief facility operator and shift supervisor must obtain a provisional certification by the later of three dates:

(1) For Class A and Class B units, 12 months after the effective date of State plan approval. For Class C units, 18 months after the effective date of State plan approval.

(2) Six months after the municipal waste combustion unit starts up.

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

(c) Each chief facility operator and shift supervisor must take one of three actions:

(1) Obtain a full certification from the American Society of Mechanical Engineers or a State certification program in your State.

(2) Schedule a full certification exam with the American Society of Mechanical Engineers (QRO–1–1994 (incorporated by reference in § 60.17 of subpart A of this part)).

(3) Schedule a full certification exam with your State certification program.

(d) The chief facility operator and shift supervisor must obtain the full certification or be scheduled to take the certification exam by the later of the following dates:

(1) For Class A and Class B units, 12 months after the effective date of State plan approval. For Class C units, 18 months after the effective date of State plan approval.

(2) Six months after the municipal waste combustion unit starts up.

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

§ 60.1680 After the required date for operator certification, who may operate the municipal waste combustion unit?

After the required date for full or provisional certification, you must not operate your municipal waste combustion unit unless one of four employees is on duty:

(a) A fully certified chief facility operator.

(b) A provisionally certified chief facility operator who is scheduled to take the full certification exam.

(c) A fully certified shift supervisor.

(d) A provisionally certified shift supervisor who is scheduled to take the full certification exam.

§ 60.1685 What if all the certified operators must be temporarily offsite?

If the certified chief facility operator and certified shift supervisor both must leave your municipal waste combustion unit, a provisionally certified control room operator at the municipal waste combustion unit may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor is away, you must meet one of three criteria:

(a) When the certified chief facility operator and certified shift supervisor are both offsite for less than 8 hours and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator.

(b) When the certified chief facility operator and certified shift supervisor are offsite for more than 8 hours, but less than 2 weeks, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must record the periods when the certified chief facility operator and certified shift supervisor are offsite and include this information in the annual report as specified under § 60.1885(l).

(c) When the certified chief facility operator and certified shift supervisor are offsite for more than 2 weeks and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must take two actions:

(1) Notify the Administrator in writing. In the notice, state what caused the absence and what you are doing to ensure that a certified chief facility operator or certified shift supervisor is onsite.

(2) Submit a status report and corrective action summary to the Administrator every 4 weeks following the initial notification. If the Administrator notifies you that your status report or corrective action summary is disapproved, the municipal waste combustion unit may continue operation for 90 days, but then must cease operation. If corrective actions are taken in the 90-day period such that the Administrator withdraws the disapproval, municipal waste combustion unit operation may continue.

Model Rule—Good Combustion Practices: Operating Requirements

§ 60.1690 What are the operating practice requirements for my municipal waste combustion unit?

(a) You must not operate your municipal waste combustion unit at loads greater than 110 percent of the maximum demonstrated load of the municipal waste combustion unit (4-hour block average), as specified under ''Definitions'' (§ 60.1940).

(b) You must not operate your municipal waste combustion unit so that the temperature at the inlet of the particulate matter control device exceeds 17 °C above the maximum demonstrated temperature of the particulate matter control device (4-hour block average), as specified under ''Definitions'' (§ 60.1940).

(c) If your municipal waste combustion unit uses activated carbon to control dioxin/furan or mercury emissions, you must maintain an 8-hour block average carbon feed rate at or above the highest average level established during the most recent dioxin/furan or mercury test.

(d) If your municipal waste combustion unit uses activated carbon to control dioxin/furan or mercury emissions, you must evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to your municipal waste combustion plant must be at or above the required quarterly usage of carbon. At your option, you may choose to evaluate required quarterly carbon usage on a municipal waste combustion unit basis for each individual municipal waste combustion unit at your plant. Calculate the required quarterly usage of carbon using the appropriate equation in § 60.1935.

(e) Your municipal waste combustion unit is exempt from limits on load level, temperature at the inlet of the particulate matter control device, and carbon feed rate during any of five situations:

(1) During your annual tests for dioxins/furans.

(2) During your annual mercury tests (for carbon feed rate requirements only).

(3) During the 2 weeks preceding your annual tests for dioxins/furans.

(4) During the 2 weeks preceding your annual mercury tests (for carbon feed rate requirements only).

(5) Whenever the Administrator or delegated State authority permits you to do any of five activities:

(i) Evaluate system performance.

(ii) Test new technology or control technologies.

(iii) Perform diagnostic testing.

(iv) Perform other activities to improve the performance of your municipal waste combustion unit.

(v) Perform other activities to advance the state of the art for emission controls for your municipal waste combustion unit.

§ 60.1695 What happens to the operating requirements during periods of startup, shutdown, and malfunction?

(a) The operating requirements of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

Model Rule—Emission Limits

§ 60.1700 What pollutants are regulated by this subpart?

Eleven pollutants, in four groupings, are regulated:

(a) *Organics.* Dioxins/furans.

(b) *Metals.*

(1) Cadmium.

(2) Lead.

(3) Mercury.

(4) Opacity.

(5) Particulate matter.

(c) *Acid gases.*

(1) Hydrogen chloride.

(2) Nitrogen oxides.

(3) Sulfur dioxide.

(d) *Other.*

(1) Carbon monoxide.

(2) Fugitive ash.

§ 60.1705 What emission limits must I meet? By when?

(a) After the date the initial stack test and continuous emission monitoring system evaluation are required or completed (whichever is earlier), you must meet the applicable emission limits specified in the following four tables of this subpart:

(1) For Class A units, see table 2.

(2) For Class B units, see table 3.

(3) For Class C units, see table 4.

(4) For carbon monoxide emission limits for all classes of units, see table 5.

(b) If your Class A or Class B municipal waste combustion unit began construction, reconstruction, or modification after June 26, 1987, then you must comply with the dioxin/furan and mercury emission limits specified in table 2 or 3 as applicable by the later of the following two dates:

(1) One year after the effective date of State plan approval.

(2) One year after the issuance of a revised construction or operating permit, if a permit modification is required.

§ 60.1710 What happens to the emission limits during periods of startup, shutdown, and malfunction?

(a) The emission limits of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

Model Rule—Continuous Emission Monitoring

§ 60.1715 What types of continuous emission monitoring must I perform?

To continuously monitor emissions, you must perform four tasks:

(a) Install continuous emission monitoring systems for certain gaseous pollutants.

(b) Make sure your continuous emission monitoring systems are operating correctly.

(c) Make sure you obtain the minimum amount of monitoring data.

(d) Install a continuous opacity monitoring system.

§ 60.1720 What continuous emission monitoring systems must I install for gaseous pollutants?

(a) You must install, calibrate, maintain, and operate continuous emission monitoring systems for oxygen (or carbon dioxide), sulfur dioxide, and carbon monoxide. If you operate a Class A municipal waste combustion unit, also install, calibrate, maintain, and operate a continuous emission monitoring system for nitrogen oxides. Install the continuous emission monitoring system for sulfur dioxide and nitrogen oxides at the outlet of the air pollution control device.

(b) You must install, evaluate, and operate each continuous emission monitoring system according to the ''Monitoring Requirements'' in § 60.13 of subpart A of this part.

(c) You must monitor the oxygen (or carbon dioxide) concentration at each location where you monitor sulfur dioxide and carbon monoxide. Additionally, if you operate a Class A municipal waste combustion unit, you must also monitor the oxygen (or carbon dioxide) concentration at the location where you monitor nitrogen oxides.

(d) You may choose to monitor carbon dioxide instead of oxygen as a diluent gas. If you choose to monitor carbon dioxide, then an oxygen monitor is not required and you must follow the requirements in § 60.1745.

(e) If you choose to demonstrate compliance by monitoring the percent reduction of sulfur dioxide, you must also install a continuous emission monitoring system for sulfur dioxide and oxygen (or carbon dioxide) at the inlet of the air pollution control device.

§ 60.1725 How are the data from the continuous emission monitoring systems used?

You must use data from the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and carbon monoxide to demonstrate continuous compliance with the applicable emission limits specified in tables 2, 3, 4, and 5 of this subpart. To demonstrate compliance for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, see § 60.1780.

§ 60.1730 How do I make sure my continuous emission monitoring systems are operating correctly?

(a) Conduct initial, daily, quarterly, and annual evaluations of your continuous emission monitoring systems that measure oxygen (or carbon dioxide), sulfur dioxide, nitrogen oxides (Class A municipal waste combustion units only), and carbon monoxide.

(b) Complete your initial evaluation of the continuous emission monitoring systems within 180 days after your final compliance date.

(c) For initial and annual evaluations, collect data concurrently (or within 30 to 60 minutes) using your oxygen (or carbon dioxide) continuous emission monitoring system, your sulfur dioxide, nitrogen oxides, or carbon monoxide continuous emission monitoring systems, as appropriate, and the appropriate test methods specified in table 6 of this subpart. Collect these data during each initial and annual evaluation of your continuous emission monitoring systems following the applicable performance specifications in appendix B of this part. Table 7 of this subpart shows the performance specifications that apply to each continuous emission monitoring system.

(d) Follow the quality assurance procedures in Procedure 1 of appendix F of this part for each continuous emission monitoring system. These procedures include daily calibration drift and quarterly accuracy determinations.

§ 60.1735 Am I exempt from any appendix B or appendix F requirements to evaluate continuous emission monitoring systems?

Yes, the accuracy tests for your sulfur dioxide continuous emission monitoring system require you to also evaluate your oxygen (or carbon dioxide) continuous emission monitoring system. Therefore, your oxygen (or carbon dioxide) continuous emission monitoring system is exempt from two requirements:

(a) Section 2.3 of Performance Specification 3 in appendix B of this part (relative accuracy requirement).

(b) Section 5.1.1 of appendix F of this part (relative accuracy test audit).

§ 60.1740 What is my schedule for evaluating continuous emission monitoring systems?

(a) Conduct annual evaluations of your continuous emission monitoring systems no more than 12 months after the previous evaluation was conducted.

(b) Evaluate your continuous emission monitoring systems daily and quarterly as specified in appendix F of this part.

§ 60.1745 What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?

You must establish the relationship between oxygen and carbon dioxide during the initial evaluation of your continuous emission monitoring system. You may reestablish the relationship during annual evaluations. To establish the relationship use three procedures:

(a) Use EPA Reference Method 3 or 3A to determine oxygen concentration at the location of your carbon dioxide monitor.

(b) Conduct at least three test runs for oxygen. Make sure each test run represents a 1-hour average and that sampling continues for at least 30 minutes in each hour.

(c) Use the fuel-factor equation in EPA Reference Method 3B to determine the relationship between oxygen and carbon dioxide.

§ 60.1750 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is this requirement enforceable?

(a) Where continuous emission monitoring systems are required, obtain 1-hour arithmetic averages. Make sure the averages for sulfur dioxide, nitrogen oxides (Class A municipal waste combustion units only), and carbon monoxide are in parts per million by dry volume at 7 percent oxygen (or the equivalent carbon dioxide level). Use the 1-hour averages of oxygen (or carbon dioxide) data from your continuous emission monitoring system to determine the actual oxygen (or carbon

dioxide) level and to calculate emissions at 7 percent oxygen (or the equivalent carbon dioxide level).

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average. Section 60.13(e)(2) of subpart A of this part requires your continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.

(c) Obtain valid 1-hour averages for 75 percent of the operating hours per day and for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation of this data collection requirement regardless of the emission level monitored, and you must notify the Administrator according to § 60.1885(e).

(e) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you must still use all valid data from the continuous emission monitoring systems in calculating emission concentrations and percent reductions in accordance with § 60.1755.

§ 60.1755 How do I convert my 1-hour arithmetic averages into appropriate averaging times and units?

(a) Use the equation in § 60.1935(a) to calculate emissions at 7 percent oxygen.

(b) Use EPA Reference Method 19, section 4.3, to calculate the daily geometric average concentrations of sulfur dioxide emissions. If you are monitoring the percent reduction of sulfur dioxide, use EPA Reference Method 19, section 5.4, to determine the daily geometric average percent reduction of potential sulfur dioxide emissions.

(c) If you operate a Class A municipal waste combustion unit, use EPA Reference Method 19, section 4.1, to calculate the daily arithmetic average for concentrations of nitrogen oxides.

(d) Use EPA Reference Method 19, section 4.1, to calculate the 4-hour or 24-hour daily block averages (as applicable) for concentrations of carbon monoxide.

§ 60.1760 What is required for my continuous opacity monitoring system and how are the data used?

(a) Install, calibrate, maintain, and operate a continuous opacity monitoring system.

(b) Install, evaluate, and operate each continuous opacity monitoring system according to § 60.13 of subpart A of this part.

(c) Complete an initial evaluation of your continuous opacity monitoring system according to Performance Specification 1 in appendix B of this part. Complete this evaluation by 180 days after your final compliance date.

(d) Complete each annual evaluation of your continuous opacity monitoring system no more than 12 months after the previous evaluation.

(e) Use tests conducted according to EPA Reference Method 9, as specified in § 60.1790, to determine compliance with the applicable emission limit for opacity in tables 2, 3, or 4 of this subpart. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the limit on opacity emissions.

§ 60.1765 What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?

Use the required span values and applicable performance specifications in table 8 of this subpart.

§ 60.1770 What must I do if my continuous emission monitoring system is temporarily unavailable to meet the data collection requirements?

Refer to table 8 of this subpart. It shows alternate methods for collecting data when these systems malfunction or when repairs, calibration checks, or zero and span checks keep you from collecting the minimum amount of data.

Model Rule—Stack Testing

§ 60.1775 What types of stack tests must I conduct?

Conduct initial and annual stack tests to measure the emission levels of dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

§ 60.1780 How are the stack test data used?

You must use results of stack tests for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash to demonstrate compliance with the applicable emission limits in tables 2, 3, and 4 of this subpart. To demonstrate compliance for carbon monoxide, nitrogen oxides, and sulfur dioxide, see § 60.1725.

§ 60.1785 What schedule must I follow for the stack testing?

(a) Conduct initial stack tests for the pollutants listed in § 60.1775 by 180 days after your final compliance date.

(b) Conduct annual stack tests for these pollutants after the initial stack test. Conduct each annual stack test within 12 months after the previous stack test.

§ 60.1790 What test methods must I use to stack test?

(a) Follow table 8 of this subpart to establish the sampling location and to determine pollutant concentrations, number of traverse points, individual test methods, and other specific testing requirements for the different pollutants.

(b) Make sure that stack tests for all these pollutants consist of at least three test runs, as specified in § 60.8 (Performance Tests) of subpart A of this part. Use the average of the pollutant emission concentrations from the three test runs to determine compliance with the applicable emission limits in tables 2, 3, or 4 of this subpart.

(c) Obtain an oxygen (or carbon dioxide) measurement at the same time as your pollutant measurements to determine diluent gas levels, as specified in § 60.1720.

(d) Use the equations in § 60.1935(a) to calculate emission levels at 7 percent oxygen (or an equivalent carbon dioxide basis), the percent reduction in potential hydrogen chloride emissions, and the reduction efficiency for mercury emissions. See the individual test methods in table 6 of this subpart for other required equations.

§ 60.1795 May I conduct stack testing less often?

(a) You may test less often if you own or operate a Class C municipal waste combustion unit and if all stack tests for a given pollutant over 3 consecutive years show you comply with the emission limit. In this case, you are not required to conduct a stack test for that pollutant for the next 2 years. However, you must conduct another stack test within 36 months of the anniversary date of the third consecutive stack test that shows you comply with the emission limit. Thereafter, you must perform stack tests every third year but no later than 36 months following the previous stack tests. If a stack test shows noncompliance with an emission limit, you must conduct annual stack tests for that pollutant until all stack tests over a 3-year period show compliance.

(b) You can test less often if you own or operate a municipal waste combustion plant that meets two conditions. First, you have multiple municipal waste combustion units onsite that are subject to this subpart. Second, all these municipal waste combustion units have demonstrated levels of dioxin/furan emissions no more than 15 nanograms per dry

standard cubic meter (total mass) for Class A units, or 30 nanograms per day standard cubic meter (total mass) for Class B and Class C units, for 2 consecutive years. In this case, you may choose to conduct annual stack tests on only one municipal waste combustion unit per year at your plant.

(1) Conduct the stack test no more than 12 months following a stack test on any municipal waste combustion unit subject to this subpart at your plant. Each year, test a different municipal waste combustion unit subject to this subpart and test all municipal waste combustion units subject to this subpart in a sequence that you determine. Once you determine a testing sequence, it must not be changed without approval by the Administrator.

(2) If each annual stack test shows levels of dioxin/furan emissions less than 15 nanograms per dry standard cubic meter (total mass) for Class A units, or 30 nanograms per day standard cubic meter (total mass) for Class B and Class C units, you may continue stack tests on only one municipal waste combustion unit subject to this subpart per year.

(3) If any annual stack test indicates levels of dioxin/furan emissions greater than 15 nanograms per dry standard cubic meter (total mass) for Class A units, or 30 nanograms per day standard cubic meter (total mass) for Class B and Class C units, conduct subsequent annual stack tests on all municipal waste combustion units subject to this subpart at your plant. You may return to testing one municipal waste combustion unit subject to this subpart per year if you can demonstrate dioxin/furan emission levels less than 15 nanograms per dry standard cubic meter (total mass) for Class A units, or 30 nanograms per day standard cubic meter (total mass) for Class B and Class C units, for all municipal waste combustion units at your plant subject to this subpart for 2 consecutive years.

§ 60.1800 May I deviate from the 12-month testing schedule if unforeseen circumstances arise?

You may not deviate from the 12-month testing schedules specified in §§ 60.1785(b) and 60.1795(b)(1) unless you apply to the Administrator for an alternative schedule, and the Administrator approves your request for alternate scheduling prior to the date on which you would otherwise have been required to conduct the next stack test.

Model Rule—Other Monitoring Requirements

§ 60.1805 Must I meet other requirements for continuous monitoring?

You must also monitor three operating parameters:

(a) Load level of each municipal waste combustion unit.

(b) Temperature of flue gases at the inlet of your particulate matter air pollution control device.

(c) Carbon feed rate if activated carbon is used to control dioxin/furan or mercury emissions.

§ 60.1810 How do I monitor the load of my municipal waste combustion unit?

(a) If your municipal waste combustion unit generates steam, you must install, calibrate, maintain, and operate a steam flowmeter or a feed water flowmeter and meet five requirements:

(1) Continuously measure and record the measurements of steam (or feed water) in kilograms per hour (or pounds per hour).

(2) Calculate your steam (or feed water) flow in 4-hour block averages.

(3) Calculate the steam (or feed water) flow rate using the method in ''American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991),'' section 4 (incorporated by reference in § 60.17 of subpart A of this part).

(4) Design, construct, install, calibrate, and use nozzles or orifices for flow rate measurements, using the recommendations in ''American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters'', 6th Edition (1971), chapter 4 (incorporated by reference in § 60.17 of subpart A of this part).

(5) Before each dioxin/furan stack test, or at least once a year, calibrate all signal conversion elements associated with steam (or feed water) flow measurements according to the manufacturer instructions.

(b) If your municipal waste combustion unit does not generate steam, you must determine, to the satisfaction of the Administrator, one or more operating parameters that can be used to continuously estimate load level (for example, the feed rate of municipal solid waste or refuse-derived fuel). You must continuously monitor the selected parameters.

§ 60.1815 How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?

You must install, calibrate, maintain, and operate a device to continuously measure the temperature of the flue gas stream at the inlet of each particulate matter control device.

§ 60.1820 How do I monitor the injection rate of activated carbon?

If your municipal waste combustion unit uses activated carbon to control dioxin/furan or mercury emissions, you must meet three requirements:

(a) Select a carbon injection system operating parameter that can be used to calculate carbon feed rate (for example, screw feeder speed).

(b) During each dioxin/furan and mercury stack test, determine the average carbon feed rate in kilograms (or pounds) per hour. Also, determine the average operating parameter level that correlates to the carbon feed rate. Establish a relationship between the operating parameter and the carbon feed rate in order to calculate the carbon feed rate based on the operating parameter level.

(c) Continuously monitor the selected operating parameter during all periods when the municipal waste combustion unit is operating and combusting waste and calculate the 8-hour block average carbon feed rate in kilograms (or pounds) per hour, based on the selected operating parameter. When calculating the 8-hour block average, do two things:

(1) Exclude hours when the municipal waste combustion unit is not operating.

(2) Include hours when the municipal waste combustion unit is operating but the carbon feed system is not working correctly.

§ 60.1825 What is the minimum amount of monitoring data I must collect with my continuous parameter monitoring systems and is this requirement enforceable?

(a) Where continuous parameter monitoring systems are used, obtain 1-hour arithmetic averages for three parameters:

(1) Load level of the municipal waste combustion unit.

(2) Temperature of the flue gases at the inlet of your particulate matter control device.

(3) Carbon feed rate if activated carbon is used to control dioxin/furan or mercury emissions.

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average.

(c) Obtain valid 1-hour averages for at least 75 percent of the operating hours per day and for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through

(c) of this section, you are in violation of this data collection requirement and you must notify the Administrator according to § 60.1885(e).

Model Rule—Recordkeeping

§ 60.1830 What records must I keep?

You must keep four types of records:

(a) Operator training and certification.

(b) Stack tests.

(c) Continuously monitored pollutants and parameters.

(d) Carbon feed rate.

§ 60.1835 Where must I keep my records and for how long?

(a) Keep all records onsite in paper copy or electronic format unless the Administrator approves another format.

(b) Keep all records on each municipal waste combustion unit for at least 5 years.

(c) Make all records available for submittal to the Administrator, or for onsite review by an inspector.

§ 60.1840 What records must I keep for operator training and certification?

You must keep records of six items:

(a) *Records of provisional certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are provisionally certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of the initial provisional certifications.

(3) Documentation showing current provisional certifications.

(b) *Records of full certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are fully certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of initial and renewal full certifications.

(3) Documentation showing current full certifications.

(c) *Records showing completion of the operator training course.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who have completed the EPA or State municipal waste combustion operator training course. Dates on which each person completed the operator training course.

(2) Dates of completion of the operator training course.

(3) Documentation showing completion of operator training course.

(d) *Records of reviews for plant-specific operating manuals.* Include three items:

(1) Names of persons who have reviewed the operating manual.

(2) Date of the initial review.

(3) Dates of subsequent annual reviews.

(e) *Records of when a certified operator is temporarily offsite.* Include two main items:

(1) If the chief facility operator and shift supervisor are offsite for more than 8 hours but less than 2 weeks and no other certified operator is onsite, record the dates that the chief facility operator and shift supervisor were offsite.

(2) When all certified chief facility operators and shift supervisors are offsite for more than 2 weeks and no other certified operator is onsite, keep records of four items:

(i) Your notice that all certified persons are offsite.

(ii) The conditions that cause these people to be offsite.

(iii) The corrective actions you are taking to ensure a certified chief facility operator or shift supervisor is onsite.

(iv) Copies of the written reports submitted every 4 weeks that summarize the actions taken to ensure that a certified chief facility operator or shift supervisor will be onsite.

(f) *Records of calendar dates.* Include the calendar date on each record.

§ 60.1845 What records must I keep for stack tests?

For stack tests required under § 60.1775, you must keep records of four items:

(a) The results of the stack tests for eight pollutants or parameters recorded in the appropriate units of measure specified in tables 2, 3, or 4 of this subpart:

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead.

(4) Mercury.

(5) Opacity.

(6) Particulate matter.

(7) Hydrogen chloride.

(8) Fugitive ash.

(b) Test reports including supporting calculations that document the results of all stack tests.

(c) The maximum demonstrated load of your municipal waste combustion units and maximum temperature at the inlet of your particulate matter control device during all stack tests for dioxin/furan emissions.

(d) The calendar date of each record.

§ 60.1850 What records must I keep for continuously monitored pollutants or parameters?

You must keep records of eight items.

(a) *Records of monitoring data.* Document six parameters measured using continuous monitoring systems:

(1) All 6-minute average levels of opacity.

(2) All 1-hour average concentrations of sulfur dioxide emissions.

(3) For Class A municipal waste combustion units only, all 1-hour average concentrations of nitrogen oxides emissions.

(4) All 1-hour average concentrations of carbon monoxide emissions.

(5) All 1-hour average load levels of your municipal waste combustion unit.

(6) All 1-hour average flue gas temperatures at the inlet of the particulate matter control device.

(b) *Records of average concentrations and percent reductions.* Document five parameters:

(1) All 24-hour daily block geometric average concentrations of sulfur dioxide emissions or average percent reductions of sulfur dioxide emissions.

(2) For Class A municipal waste combustion units only, all 24-hour daily arithmetic average concentrations of nitrogen oxides emissions.

(3) All 4-hour block or 24-hour daily block arithmetic average concentrations of carbon monoxide emissions.

(4) All 4-hour block arithmetic average load levels of your municipal waste combustion unit.

(5) All 4-hour block arithmetic average flue gas temperatures at the inlet of the particulate matter control device.

(c) *Records of exceedances.* Document three items:

(1) Calendar dates whenever any of the five pollutants or parameter levels recorded in paragraph (b) or the opacity level recorded in paragraph (a)(1) of this section did not meet the emission limits or operating levels specified in this subpart.

(2) Reasons you exceeded the applicable emission limits or operating levels.

(3) Corrective actions you took, or are taking, to meet the emission limits or operating levels.

(d) *Records of minimum data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of data required under §§ 60.1750 and 60.1825. Record these dates for five types of pollutants and parameters:

(i) Sulfur dioxide emissions.

(ii) For Class A municipal waste combustion units only, nitrogen oxides emissions.

(iii) Carbon monoxide emissions.
(iv) Load levels of your municipal waste combustion unit.
(v) Temperatures of the flue gases at the inlet of the particulate matter control device.
(2) Reasons you did not collect the minimum data.
(3) Corrective actions you took or are taking to obtain the required amount of data.
(e) *Records of exclusions.* Document each time you have excluded data from your calculation of averages for any of the following five pollutants or parameters and the reasons the data were excluded:
(1) Sulfur dioxide emissions.
(2) For Class A municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load levels of your municipal waste combustion unit.
(5) Temperatures of the flue gases at the inlet of the particulate matter control device.
(f) *Records of drift and accuracy.* Document the results of your daily drift tests and quarterly accuracy determinations according to Procedure 1 of appendix F of this part. Keep these records for the sulfur dioxide, nitrogen oxides (Class A municipal waste combustion units only), and carbon monoxide continuous emissions monitoring systems.
(g) *Records of the relationship between oxygen and carbon dioxide.* If you chose to monitor carbon dioxide instead of oxygen as a diluent gas, document the relationship between oxygen and carbon dioxide, as specified in § 60.1745.
(h) *Records of calendar dates.* Include the calendar date on each record.

§ 60.1855 What records must I keep for municipal waste combustion units that use activated carbon?

For municipal waste combustion units that use activated carbon to control dioxin/furan or mercury emissions, you must keep records of five items:
(a) *Records of average carbon feed rate.* Document five items:
(1) Average carbon feed rate (in kilograms or pounds per hour) during all stack tests for dioxin/furan and mercury emissions. Include supporting calculations in the records.
(2) For the operating parameter chosen to monitor carbon feed rate, average operating level during all stack tests for dioxin/furans and mercury emissions. Include supporting data that document the relationship between the operating parameter and the carbon feed rate.
(3) All 8-hour block average carbon feed rates in kilograms (pounds) per hour calculated from the monitored operating parameter.
(4) Total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include supporting documentation.
(5) Required quarterly usage of carbon for the municipal waste combustion plant, calculated using the appropriate equation in § 60.1935(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant. Include supporting calculations.
(b) *Records of low carbon feed rates.* Document three items:
(1) The calendar dates when the average carbon feed rate over an 8-hour block was less than the average carbon feed rates determined during the most recent stack test for dioxin/furan or mercury emissions (whichever has a higher feed rate).
(2) Reasons for the low carbon feed rates.
(3) Corrective actions you took or are taking to meet the 8-hour average carbon feed rate requirement.
(c) *Records of minimum carbon feed rate data.* Document three items:
(1) Calendar dates for which you did not collect the minimum amount of carbon feed rate data required under § 60.1825.
(2) Reasons you did not collect the minimum data.
(3) Corrective actions you took or are taking to get the required amount of data.
(d) *Records of exclusions.* Document each time you have excluded data from your calculation of carbon feed rates and the reasons the data were excluded.
(e) *Records of calendar dates.* Include the calendar date on each record.

Model Rule—Reporting

§ 60.1860 What reports must I submit and in what form?

(a) Submit an initial report and annual reports, plus semiannual reports for any emission or parameter level that does not meet the limits specified in this subpart.
(b) Submit all reports on paper, postmarked on or before the submittal dates in §§ 60.1870, 60.1880, and 60.1895. If the Administrator agrees, you may submit electronic reports.
(c) Keep a copy of all reports required by §§ 60.1875, 60.1885, and 60.1900 onsite for 5 years.

§ 60.1865 What are the appropriate units of measurement for reporting my data?

See tables 2, 3, 4 and 5 of this subpart for appropriate units of measurement.

§ 60.1870 When must I submit the initial report?

As specified in subpart A of this part, submit your initial report by 180 days after your final compliance date.

§ 60.1875 What must I include in my initial report?

You must include seven items:
(a) The emission levels measured on the date of the initial evaluation of your continuous emission monitoring systems for all of the following five pollutants or parameters as recorded in accordance with § 60.1850(b).
(1) The 24-hour daily geometric average concentration of sulfur dioxide emissions or the 24-hour daily geometric percent reduction of sulfur dioxide emissions.
(2) For Class A municipal waste combustion units only, the 24-hour daily arithmetic average concentration of nitrogen oxides emissions.
(3) The 4-hour block or 24-hour daily arithmetic average concentration of carbon monoxide emissions.
(4) The 4-hour block arithmetic average load level of your municipal waste combustion unit.
(5) The 4-hour block arithmetic average flue gas temperature at the inlet of the particulate matter control device.
(b) The results of the initial stack tests for eight pollutants or parameters (use appropriate units as specified in tables 2, 3, or 4 of this subpart):
(1) Dioxins/furans.
(2) Cadmium.
(3) Lead.
(4) Mercury.
(5) Opacity.
(6) Particulate matter.
(7) Hydrogen chloride.
(8) Fugitive ash.
(c) The test report that documents the initial stack tests including supporting calculations.
(d) The initial performance evaluation of your continuous emissions monitoring systems. Use the applicable performance specifications in appendix B of this part in conducting the evaluation.
(e) The maximum demonstrated load of your municipal waste combustion unit and the maximum demonstrated temperature of the flue gases at the inlet of the particulate matter control device.

Use values established during your initial stack test for dioxin/furan emissions and include supporting calculations.

(f) If your municipal waste combustion unit uses activated carbon to control dioxin/furan or mercury emissions, the average carbon feed rates that you recorded during the initial stack tests for dioxin/furan and mercury emissions. Include supporting calculations as specified in § 60.1855(a)(1) and (2).

(g) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 60.1745.

§ 60.1880 When must I submit the annual report?

Submit the annual report no later than February 1 of each year that follows the calendar year in which you collected the data. If you have an operating permit for any unit under title V of the Clean Air Act, the permit may require you to submit semiannual reports. Parts 70 and 71 of this chapter contain program requirements for permits.

§ 60.1885 What must I include in my annual report?

Summarize data collected for all pollutants and parameters regulated under this subpart. Your summary must include twelve items:

(a) The results of the annual stack test, using appropriate units, for eight pollutants, as recorded under § 60.1845(a):

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead.

(4) Mercury.

(5) Opacity.

(6) Particulate matter.

(7) Hydrogen chloride.

(8) Fugitive ash.

(b) A list of the highest average emission levels recorded, in the appropriate units. List these values for five pollutants or parameters:

(1) Sulfur dioxide emissions.

(2) For Class A municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load level of the municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device (4-hour block average).

(c) The highest 6-minute opacity level measured. Base this value on all 6-minute average opacity levels recorded by your continuous opacity monitoring system (§ 60.1850(a)(1)).

(d) For municipal waste combustion units that use activated carbon for controlling dioxin/furan or mercury emissions, include four records:

(1) The average carbon feed rates recorded during the most recent dioxin/furan and mercury stack tests.

(2) The lowest 8-hour block average carbon feed rate recorded during the year.

(3) The total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant.

(4) The required quarterly carbon usage of your municipal waste combustion plant calculated using the appropriate equation in § 60.1935(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant.

(e) The total number of days that you did not obtain the minimum number of hours of data for six pollutants or parameters. Include the reasons you did not obtain the data and corrective actions that you have taken to obtain the data in the future. Include data on:

(1) Sulfur dioxide emissions.

(2) For Class A municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load level of the municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.

(6) Carbon feed rate.

(f) The number of hours you have excluded data from the calculation of average levels (include the reasons for excluding it). Include data for six pollutants or parameters:

(1) Sulfur dioxide emissions.

(2) For Class A municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load level of the municipal waste combustion unit. (5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.

(6) Carbon feed rate.

(g) A notice of your intent to begin a reduced stack testing schedule for dioxin/furan emissions during the following calendar year if you are eligible for alternative scheduling (§ 60.1795(a) or (b)).

(h) A notice of your intent to begin a reduced stack testing schedule for other pollutants during the following calendar year if you are eligible for alternative scheduling (§ 60.1795(a)).

(i) A summary of any emission or parameter level that did not meet the limits specified in this subpart.

(j) A summary of the data in paragraphs (a) through (d) of this section from the year preceding the reporting year. This summary gives the Administrator a summary of the performance of the municipal waste combustion unit over a 2-year period.

(k) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 60.1745.

(l) Documentation of periods when all certified chief facility operators and certified shift supervisors are offsite for more than 8 hours.

§ 60.1890 What must I do if I am out of compliance with these standards?

You must submit a semiannual report on any recorded emission or parameter level that does not meet the requirements specified in this subpart.

§ 60.1895 If a semiannual report is required, when must I submit it?

(a) For data collected during the first half of a calendar year, submit your semiannual report by August 1 of that year.

(b) For data you collected during the second half of the calendar year, submit your semiannual report by February 1 of the following year.

§ 60.1900 What must I include in the semiannual out-of-compliance reports?

You must include three items in the semiannual report:

(a) For any of the following six pollutants or parameters that exceeded the limits specified in this subpart, include the calendar date they exceeded the limits, the averaged and recorded data for that date, the reasons for exceeding the limits, and your corrective actions:

(1) Concentration or percent reduction of sulfur dioxide emissions.

(2) For Class A municipal waste combustion units only, concentration of nitrogen oxides emissions.

(3) Concentration of carbon monoxide emissions.

(4) Load level of your municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of your particulate matter air pollution control device.

(6) Average 6-minute opacity level.

(b) If the results of your annual stack tests (as recorded in § 60.1845(a)) show emissions above the limits specified in table 2, 3 or 4 of this subpart as

applicable for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, include a copy of the test report that documents the emission levels and your corrective actions.

(c) For municipal waste combustion units that apply activated carbon to control dioxin/furan or mercury emissions, include two items:

(1) Documentation of all dates when the 8-hour block average carbon feed rate (calculated from the carbon injection system operating parameter) is less than the highest carbon feed rate established during the most recent mercury and dioxin/furan stack test (as specified in § 60.1855(a)(1)). Include four items:

(i) Eight-hour average carbon feed rate.

(ii) Reasons for these occurrences of low carbon feed rates.

(iii) The corrective actions you have taken to meet the carbon feed rate requirement.

(iv) The calendar date.

(2) Documentation of each quarter when total carbon purchased and delivered to the municipal waste combustion plant is less than the total required quarterly usage of carbon. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include five items:

(i) Amount of carbon purchased and delivered to the plant.

(ii) Required quarterly usage of carbon.

(iii) Reasons for not meeting the required quarterly usage of carbon.

(iv) The corrective actions you have taken to meet the required quarterly usage of carbon.

(v) The calendar date.

§ 60.1905 Can reporting dates be changed?

(a) If the Administrator agrees, you may change the semiannual or annual reporting dates.

(b) See § 60.19(c) in subpart A of this part for procedures to seek approval to change your reporting date.

Model Rule—Air Curtain Incinerators That Burn 100 Percent Yard Waste

§ 60.1910 What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

§ 60.1915 What is yard waste?

Yard waste is grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(a) Construction, renovation, and demolition wastes that are exempt from the definition of ''municipal solid waste'' in § 60.1940 of this subpart.

(b) Clean wood that is exempt from the definition of ''municipal solid waste'' in § 60.1940 of this subpart.

§ 60.1920 What are the emission limits for air curtain incinerators that burn 100 percent yard waste?

(a) By 180 days after your final compliance date, you must meet two limits:

(1) The opacity limit is 10 percent (6-minute average) for air curtain incinerators that can combust at least 35 tons per day of municipal solid waste and no more than 250 tons per day of municipal solid waste.

(2) The opacity limit is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times. Each malfunction must not exceed 3 hours.

§ 60.1925 How must I monitor opacity for air curtain incinerators that burn 100 percent yard waste?

(a) Use EPA Reference Method 9 to determine compliance with the opacity limit.

(b) Conduct an initial test for opacity as specified in § 60.8 of subpart A of this part.

(c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

§ 60.1930 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent yard waste?

(a) Provide a notice of construction that includes four items:

(1) Your intent to construct the air curtain incinerator.

(2) Your planned initial startup date.

(3) Types of fuels you plan to combust in your air curtain incinerator.

(4) The capacity of your incinerator, including supporting capacity calculations, as specified in § 60.1935(d) and (e).

(b) Keep records of results of all opacity tests onsite in either paper copy or electronic format unless the Administrator approves another format.

(c) Keep all records for each incinerator for at least 5 years.

(d) Make all records available for submittal to the Administrator or for onsite review by an inspector.

(e) Submit the results (each 6-minute average) of the opacity tests by February 1 of the year following the year of the opacity emission test.

(f) Submit reports as a paper copy on or before the applicable submittal date. If the Administrator agrees, you may submit reports on electronic media.

(g) If the Administrator agrees, you may change the annual reporting dates (see § 60.19(c) in subpart A of this part).

(h) Keep a copy of all reports onsite for a period of 5 years.

Equations

§ 60.1935 What equations must I use?

(a) *Concentration correction to 7 percent oxygen.* Correct any pollutant concentration to 7 percent oxygen using the following equation:

$$C_7\% = C_{unc} * (13.9) * (1/(20.9 - C_{O2}))$$

Where:

$C^7\%$ = concentration corrected to 7 percent oxygen.

C_{unc} = uncorrected pollutant concentration.

C_{O2} = concentration of oxygen (%).

(b) *Percent reduction in potential mercury emissions.* Calculate the percent reduction in potential mercury emissions ($\%P_{Hg}$) using the following equation:

$$\%P_{Hg} = (E_i - Eo) * (100/E_i)$$

Where:

$\%P_{Hg}$ = percent reduction of potential mercury emissions

E_i = mercury emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

E_o = mercury emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(c) *Percent reduction in potential hydrogen chloride emissions.* Calculate the percent reduction in potential hydrogen chloride emissions ($\%P_{HCl}$) using the following equation:

$$\%P_{HCl} = (E^i - E_o) * (100/E_i)$$

Where:

$\%P_{HCl}$ = percent reduction of the potential hydrogen chloride emissions

E_i = hydrogen chloride emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

E_o = hydrogen chloride emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(d) *Capacity of a municipal waste combustion unit.* For a municipal waste combustion unit that can operate

continuously for 24-hour periods, calculate the capacity of the municipal waste combustion unit based on 24 hours of operation at the maximum charge rate. To determine the maximum charge rate, use one of two methods:

(1) For municipal waste combustion units with a design based on heat input capacity, calculate the maximum charging rate based on this maximum heat input capacity and one of two heating values:

(i) If your municipal waste combustion unit combusts refuse-derived fuel, use a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound).

(ii) If your municipal waste combustion unit combusts municipal solid waste, use a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound).

(2) For municipal waste combustion units with a design not based on heat input capacity, use the maximum designed charging rate.

(e) *Capacity of a batch municipal waste combustion unit.* Calculate the capacity of a batch municipal waste combustion unit as the maximum design amount of municipal solid waste they can charge per batch multiplied by the maximum number of batches they can process in 24 hours. Calculate this maximum number of batches by dividing 24 by the number of hours needed to process one batch. Retain fractional batches in the calculation. For example, if one batch requires 16 hours, the municipal waste combustion unit can combust 24/16, or 1.5 batches, in 24 hours.

(f) *Quarterly carbon usage.* If you use activated carbon to comply with the dioxin/furan or mercury limits, calculate the required quarterly usage of carbon using the appropriate equation for plant basis or unit basis:

(1) Plant basis.

$$C = \sum_{i=i}^{n} f_i * h_i$$

Where:

C = required quarterly carbon usage for the plant in kilograms (or pounds).

f_i = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. This is the average carbon feed rate during the most recent mercury or dioxin/furan stack tests (whichever has a higher feed rate).

h_i = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

n = number of municipal waste combustion units, i, located at your plant.

(2) Unit basis.

$$C = f * h$$

Where:

C = required quarterly carbon usage for the unit in kilograms (or pounds).

f = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. This is the average carbon feed rate during the most recent mercury or dioxin/furan stack tests (whichever has a higher feed rate).

h = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

Definitions

§ 60.1940 What definitions must I know?

Terms used but not defined in this section are defined in the Clean Air Act and in subparts A and B of this part.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or the Administrator of a State Air Pollution Control Agency.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

Batch municipal waste combustion unit means a municipal waste combustion unit designed so it cannot combust municipal solid waste continuously 24 hours per day because the design does not allow waste to be fed to the unit or ash to be removed during combustion.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 (366 in leap years) consecutive days starting on January 1 and ending on December 31.

Chief facility operator means the person in direct charge and control of the operation of a municipal waste combustion unit. This person is responsible for daily onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit.

Class A units mean nonrefractory-type small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant capacity greater than 250 tons per day of municipal solid waste. See the definition of ''municipal waste combustion plant capacity'' for specification of which units at a plant site are included in the aggregate capacity calculation.

Class B units mean refractory-type small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant capacity greater than 250 tons per day of municipal solid waste. See the definition of ''municipal waste combustion plant capacity'' for specification of which units at a plant site are included in the aggregate capacity calculation.

Class C units mean all small municipal combustion units that are located at municipal waste combustion plants with aggregate plant capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of ''municipal waste combustion plant capacity'' for specification of which units at a plant site are included in the aggregate capacity calculation.

Clean wood means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include two items:

(1) ''Yard waste'', which is defined in this section.

(2) Construction, renovation, or demolition wastes (for example, railroad ties and telephone poles) that are exempt from the definition of ''municipal solid waste'' in this section.

Cofired combustion unit means a unit that combusts municipal solid waste with nonmunicipal solid waste fuel (for example, coal, industrial process waste). To be considered a cofired combustion unit, the unit must be subject to a federally enforceable permit that limits it to combusting a fuel feed stream which is 30 percent or less (by weight) municipal solid waste as measured each calendar quarter.

Continuous burning means the continuous, semicontinuous, or batch feeding of municipal solid waste to dispose of the waste, produce energy, or provide heat to the combustion system in preparation for waste disposal or energy production. Continuous burning does not mean the use of municipal solid waste solely to thermally protect the grate or hearth during the startup period when municipal solid waste is not fed to the grate or hearth.

Continuous emission monitoring system means a monitoring system that continuously measures the emissions of a pollutant from a municipal waste combustion unit.

Dioxins/furans mean tetra through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Effective date of State plan approval means the effective date that the EPA approves the State plan. The **Federal**

Register specifies this date in the notice that announces EPA's approval of the State plan.

Eight-hour block average means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of three 8-hour periods of time:

(1) 12:00 midnight to 8:00 a.m.
(2) 8:00 a.m. to 4:00 p.m.
(3) 4:00 p.m. to 12:00 midnight.

Federally enforceable means all limits and conditions the Administrator can enforce (including the requirements of 40 CFR parts 60, 61, and 63), requirements in a State's implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

First calendar half means the period that starts on January 1 and ends on June 30 in any year.

Fluidized bed combustion unit means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

Four-hour block average or *4-hour block average* means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of six 4-hour periods:

(1) 12:00 midnight to 4 a.m.
(2) 4 a.m. to 8 a.m.
(3) 8 a.m. to 12:00 noon.
(4) 12:00 noon to 4 p.m.
(5) 4 p.m. to 8 p.m.
(6) 8 p.m. to 12:00 midnight.

Mass burn refractory municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, this includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

Mass burn rotary waterwall municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

Mass burn waterwall municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

Maximum demonstrated load of a municipal waste combustion unit means the highest 4-hour block arithmetic average municipal waste combustion unit load achieved during 4 consecutive hours in the course of the most recent dioxin/furan stack test that demonstrates compliance with the applicable emission limit for dioxins/furans specified in this subpart.

Maximum demonstrated temperature of the particulate matter control device means the highest 4-hour block arithmetic average flue gas temperature measured at the inlet of the particulate matter control device during 4 consecutive hours in the course of the most recent stack test for dioxin/furan emissions that demonstrates compliance with the limits specified in this subpart.

Mixed fuel-fired (pulverized coal/refuse-derived fuel) combustion unit means a combustion unit that combusts coal and refuse-derived fuel simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is combusted in suspension. This includes both conventional pulverized coal and micropulverized coal.

Modification or *modified municipal waste combustion unit* means a municipal waste combustion unit you have changed later than 6 months after [*the date of publication of the final rule*] and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the unit (not including the cost of land) updated to current costs.

(2) Any physical change in the municipal waste combustion unit or change in the method of operating it that increases the emission level of any air pollutant for which standards have been established under section 129 or section 111 of the Clean Air Act. Increases in the emission level of any air pollutant are determined when the municipal waste combustion unit operates at 100 percent of its physical load capability and are measured downstream of all air pollution control devices. Load restrictions based on permits or other nonphysical operational restrictions cannot be considered in this determination.

Modular excess-air municipal waste combustion unit means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

Modular starved-air municipal waste combustion unit means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

Municipal solid waste or *municipal-type solid waste* means household, commercial/retail, or institutional waste. Household waste includes material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, by hospitals (nonmedical), by nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste and refuse-derived fuel. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

Municipal waste combustion plant means one or more municipal waste combustion units at the same location as specified under ''Applicability of State Plans'' (§ 60.1550(a)).

Municipal waste combustion plant capacity means the aggregate municipal waste combustion unit capacity at a plant for all municipal waste combustion units at the plant that are not subject to subparts Ea, Eb, or AAAA of this part.

Municipal waste combustion unit means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define these municipal waste combustion units:

(1) Municipal waste combustion units do not include pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under ''Applicability of State Plans''

(§ 60.1555(h) and (i)). Municipal waste combustion units do not include cement kilns that combust municipal solid waste as specified under ''Applicability of State Plans'' (§ 60.1555(j)). Municipal waste combustion units also do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(2) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(i) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(ii) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(iii) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

Particulate matter means total particulate matter emitted from municipal waste combustion units as measured by EPA Reference Method 5 (§ 60.1790).

Plastics or rubber recycling unit means an integrated processing unit for which plastics, rubber, or rubber tires are the only feed materials (incidental contaminants may be in the feed materials). These materials are processed and marketed to become input feed stock for chemical plants or petroleum refineries. The following three criteria further define a plastics or rubber recycling unit:

(1) Each calendar quarter, the combined weight of the feed stock that a plastics or rubber recycling unit produces must be more than 70 percent of the combined weight of the plastics, rubber, and rubber tires that recycling unit processes.

(2) The plastics, rubber, or rubber tires fed to the recycling unit may originate from separating or diverting plastics, rubber, or rubber tires from municipal or industrial solid waste. These feed materials may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards.

(3) The plastics, rubber, and rubber tires fed to the recycling unit may contain incidental contaminants (for example, paper labels on plastic bottles or metal rings on plastic bottle caps).

Potential hydrogen chloride emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

Potential mercury emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without controls for mercury emissions.

Potential sulfur dioxide emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

Pyrolysis/combustion unit means a unit that produces gases, liquids, or solids by heating municipal solid waste. The gases, liquids, or solids produced are combusted and the emissions vented to the atmosphere.

Reconstruction means rebuilding a municipal waste combustion unit and meeting two criteria:

(1) The reconstruction begins on or after [the date 6 months after publication date of the final rule].

(2) The cumulative cost of the construction over the life of the unit exceeds 50 percent of the original cost of building and installing the municipal waste combustion unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the municipal waste combustion unit used to calculate these costs, see the definition of ''municipal waste combustion unit'' in this section.

Refractory unit or *refractory wall furnace* means a municipal waste combustion unit that has no energy recovery (such as through a waterwall) in the furnace of the municipal waste combustion unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Same location means the same or contiguous properties under common ownership or control, including those separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof. Entities may include a municipality, other governmental unit, or any quasi-governmental authority (for example, a public utility district or regional authority for waste disposal).

Second calendar half means the period that starts on July 1 and ends on December 31 in any year.

Shift supervisor means the person who is in direct charge and control of operating a municipal waste combustion unit and who is responsible for onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit during an assigned shift.

Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

Standard conditions when referring to units of measure mean a temperature of 20°C and a pressure of 101.3 kilopascals.

Startup period means the period when a municipal waste combustion unit begins the continuous combustion of municipal solid waste. It does not include any warmup period during which the municipal waste combustion unit combusts fossil fuel or other solid waste fuel but receives no municipal solid waste.

State means any of the 50 United States and the protectorates of the United States.

State plan means a plan submitted pursuant to section 111(d) and section 129(b)(2) of the Clean Air Act and 40 CFR part 60, subpart B, that implements and enforces 40 CFR part 60, subpart BBBB.

Stoker (refuse-derived fuel) combustion unit means a steam generating unit that combusts refuse-derived fuel in a semisuspension combusting mode, using air-fed distributors.

Total mass dioxins/furans or *total mass* means the total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans as

determined using EPA Reference Method 23 and the procedures specified in § 60.1790.

Twenty-four hour daily average or *24-hour daily average* means either the arithmetic mean or geometric mean (as specified) of all hourly emission concentrations when the municipal waste combustion unit operates and combusts municipal solid waste measured during the 24 hours between 12:00 midnight and the following midnight.

Untreated lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Waterwall furnace means a municipal waste combustion unit that has energy (heat) recovery in the furnace (for example, radiant heat transfer section) of the combustion unit.

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(1) Construction, renovation, and demolition wastes that are exempt from the definition of ''municipal solid waste'' in this section.

(2) Clean wood that is exempt from the definition of ''municipal solid waste'' in this section.

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Table 1 of Subpart BBBB — Model Rule — Compliance Schedules and Increments of Progress

Affected units	Increment 1 (Submit final control plan)	Increment 2 (Award contracts)	Increment 3 (Begin onsite construction)	Increment 4 (Complete onsite construction)	Increment 5 (Final compliance)
All affected Class A and Class B units[a]	(Dates to be specified in State plan)	(Dates to be specified in State plan)	(Dates to be specified in State plan)	(Dates to be specified in State plan)	(Dates to be specified in State plan)[b,c]
All Class C units [a]	(Dates to be specified in State plan)	Not applicable	Not applicable	Not applicable	(Dates to be specified in State plan)[b]

[a] Plant specific schedules can be used at the discretion of the State.

[b] The date can be no later than 3 years after the effective date of State plan approval or 5 years after [the date of publication of the final rule].

[c] For Class A and Class B units that began construction, reconstruction, or modification after June 26, 1987, comply with the dioxin/furan and mercury limits by the later of two dates:

1. One year after the effective date of State plan approval.
2. One year after the issuance of a revised construction or operation permit, if a permit modification is required.

Table 2 of Subpart BBBB — Model Rule — Class A Emission Limits for Existing Municipal Waste Combustion Units

For these pollutants	You must meet these emission limits [a]	Using these averaging times	And determine compliance by these methods
Organics			
Dioxins/furans (total mass basis)	30 nanograms per dry standard cubic meter for municipal waste combustion units that do not employ an electrostatic precipitator-based emission control system -or- 60 nanograms per dry standard cubic meter for municipal waste combustion units that employ an electrostatic precipitator-based emission control system	3-run average (minimum run duration is 4 hours)	Stack test
Metals			
Cadmium	0.040 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Lead	0.490 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Mercury	0.080 milligrams per dry standard cubic meter -or- 85 percent reduction of potential mercury emissions	3-run average (run duration specified in test method)	Stack test
Opacity	10 percent	Thirty 6-minute averages	Stack test
Particulate matter	27 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test

[a] All emission limits are measured at 7 percent oxygen.

Table 2 of Subpart BBBB — Model Rule —Class A Emission Limits For Existing Municipal Waste Combustion Units (Continued)

For these pollutants	You must meet these emission limits [a]	Using these averaging times	And determine compliance by these methods
Lead	0.490 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Mercury	0.080 milligrams per dry standard cubic meter -or- 85 percent reduction of potential mercury emissions	3-run average (run duration specified in test method)	Stack test
Opacity	10 percent	Thirty 6-minute averages	Stack test
Particulate matter	27 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test

[a] All emission limits are measured at 7 percent oxygen.

Table 3 of Subpart BBBB — Model Rule — Class B Emission Limits for Existing Municipal Waste Combustion Units

For these pollutants		You must meet these emission limits[a]	Using these averaging times	And determine compliance by these methods
Organics				
	Dioxins/furans (total mass basis)	123 nanograms per dry standard cubic meter	3-run average (minimum run duration is 4 hours)	Stack test
Metals				
	Cadmium	0.10 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
	Lead	1.6 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
	Mercury	0.080 milligrams per dry standard cubic meter -or- 85 percent reduction of potential mercury emissions	3-run average (run duration specified in test method)	Stack test
	Opacity	10 percent	Thirty 6-minute averages	Stack test
	Particulate matter	34 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Acid Gases				
	Hydrogen chloride	200 parts per million by dry volume -or- 50 percent reduction of potential hydrogen chloride emissions	3-run average (minimum run duration is 1 hour)	Stack test
	Nitrogen Oxides	Not applicable	Not applicable	Not applicable

[a]All emission limits measured at 7 percent oxygen.

Table 3 of Subpart BBBB — Model Rule — Class B Emission Limits for Existing Municipal Waste Combustion Units (Continued)

For these pollutants	You must meet these emission limits[a]	Using these averaging times	And determine compliance by these methods
Acid gases			
Sulfur dioxide	55 parts per million by dry volume -or - 50 percent reduction of potential sulfur dioxide emissions	24-hour daily block geometric average concentration -or- percent reduction	Continuous emission monitoring system
Other			
Fugitive ash	Visible emissions for no more than 5 percent of hourly observation period	Three 1-hour observation periods	Visible emission test

[a]All emission limits are measured at 7 percent oxygen.

Table 4 of Subpart BBBB — Model Rule — Class C Emission Limits for Existing Municipal Waste Combustion Units

For these pollutants		You must meet these emission limits[a]	Using these averaging times	And determine compliance by these methods
Organics				
	Dioxins/furans (total mass basis)	125 nanograms per dry standard cubic meter	3-run average (minimum run duration is 4 hours)	Stack test
Metals				
	Cadmium	0.10 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
	Lead	1.6 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
	Mercury	0.080 milligrams per dry standard cubic meter -or- 85 percent reduction of potential mercury emissions	3-run average (run duration specified in test method)	Stack test
	Opacity	10 percent	Thirty 6-minute averages	Stack test
	Particulate Matter	70 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Acid gases				
	Hydrogen chloride	250 parts per million by volume -or- 50 percent reduction of potential hydrogen chloride emissions	3-run average (minimum run duration is 1 hour)	Stack test

[a]All emission limits measured at 7 percent oxygen.

Table 4 of Subpart BBBB — Model Rule — Class C Emission Limits for Existing Municipal Waste Combustion Units (Continued)

For these pollutants		You must meet these emission limits[a]	Using these averaging times	And determine compliance by these methods
Acid gases				
	Nitrogen Oxides	Not applicable	Not applicable	Not applicable
	Sulfur Dioxide	80 parts per million by dry volume -or - 50 percent reduction of potential sulfur dioxides emissions	24-hour daily block geometric average concentration -or- percent reduction	Continuous emission monitoring system
Other				
	Fugitive Ash	Visible emissions for no more than 5 percent of hourly observation period	Three 1-hour observation periods	Visible emission test

[a]All emission limits are measured at 7 percent oxygen.

Table 5 of Subpart BBBB — Model Rule — Carbon Monoxide Emission Limits for Existing Municipal Waste Combustion Units

For these municipal waste combustion units	You must meet the carbon monoxide limits[a]	Using these averaging times[b]
Fluidized bed	100 parts per million by dry volume	4-hour
Fluidized bed, mixed fuel, (wood/refuse-derived fuel)	200 parts per million by dry volume	24-hour
Mass burn rotary refractory	100 parts per million by dry volume	4-hour
Mass burn rotary waterwall	250 parts per million by dry volume	24-hour
Mass burn waterwall and refractory	100 parts per million by dry volume	4-hour
Mixed fuel-fired, (pulverized coal/refuse-derived fuel)	150 parts per million by dry volume	4-hour
Modular starved-air and excess air	50 parts per million by dry volume	4-hour
Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel)	200 parts per million by dry volume	24-hour daily
Stoker, refuse-derived fuel	200 parts per million by dry volume	24-hour daily

[a] All limits are measured at 7 percent oxygen. Compliance is determined by continuous emission monitoring systems.

[b] All averages are block averages. See §60.1940 for definitions.

Table 6 of Subpart BBBB — Model Rule — Requirements for Validating Continuous Emission Monitoring Systems (CEMS)

For these continuous monitoring systems	Use these methods to validate pollutant concentration levels	Use these methods to measure oxygen (or carbon dioxide)
Nitrogen oxides (Class A units only)	Method 7, 7A, 7B, 7C, 7D, or 7E	Method 3 or 3A
Sulfur dioxide	Method 6 or 6C	Method 3 or 3A
Carbon monoxide	Method 10, 10A, or 10B	Method 3 or 3A

Table 7 of Subpart BBBB — Model Rule — Requirements for Continuous Emission Monitoring Systems (CEMS)

For these pollutants	Use these span values for your CEMS	Use these performance specifications for your CEMS (from appendix B)	If needed to meet minimum data requirements, use these alternate methods to collect data
Opacity	100 percent opacity	P.S. 1	Method 9
Nitrogen oxides (Class A units only)	**Control device outlet:** 125 percent of the maximum expected hourly potential nitrogen oxides emissions of the municipal waste combustion unit	P.S. 2	Method 19
Sulfur dioxide	**Inlet to control device:** 125 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit **Control device outlet:** 50 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit	P.S. 2	Method 19
Carbon monoxide	125 percent of the maximum expected hourly potential carbon monoxide emissions of the municipal waste combustion unit	P.S. 4A	Method 10 with alternative interference trap
Oxygen or carbon dioxide	25 percent oxygen or 25 percent carbon dioxide	P.S. 3	Method 3A or 3B

Table 8 of Subpart BBBB — Model Rule — Requirements for Stack Tests

To measure these pollutants	Use these methods to determine the sampling location	Use these methods to measure pollutant concentration	Also note the following additional information
Organics			
Dioxins/furans	Method 1	Method 23[a]	The minimum sampling time must be 4 hours per test run while the municipal waste combustion unit is operating at full load.
Metals			
Cadmium	Method 1	Method 29[a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Lead	Method 1	Method 29[a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Mercury	Method 1	Method 29[a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Opacity	Not applicable	Method 9	Use Method 9 to determine compliance with opacity limits. 3-hour observation period (thirty 6-minute averages).
Particulate matter	Method 1	Method 5[a]	The minimum sample volume must be 1.7 cubic meters. The probe and filter holder heating systems in the sample train must be set to provide a gas temperature no greater than 160 $\pm$14 °C.

[a] Must simultaneously measure oxygen (or carbon dioxide) using Method 3 or 3A.
[b] Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for Appendix F quality assurance requirements.

Table 8 of Subpart BBBB — Model Rule — Requirements for Stack Tests (Continued)

To measure these pollutants	Use these methods to determine the sampling location	Use these methods to measure pollutant concentration	Also note the following additional information
Acid gases[b]			
Hydrogen chloride	Not applicable	Method 26[a]	Test runs must be at least 1 hour long.
Other[b]			
Fugitive ash	Not applicable	Method 22 (visible emissions)	The three 1-hour observation period must include periods when the facility transfers fugitive ash from the municipal waste combustion unit to the area where the fugitive ash is stored or loaded into containers or trucks.

[a] Must simultaneously measure oxygen (or carbon dioxide) using Method 3 or 3A.
[b] Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for Appendix F quality assurance requirements.

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Federal Register

Monday
August 30, 1999

Part III

Environmental Protection Agency

40 CFR Part 60

New Source Performance Standards for New Small Municipal Waste Combustion Units; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6424–7]

RIN 2060–AI51

New Source Performance Standards for New Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to reestablish new source performance standards (NSPS) for new small municipal waste combustion (MWC) units. When implemented, these NSPS will result in stringent emission limits for organics (dioxins/furans), metals (cadmium, lead, mercury, and particulate matter), and acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides). The NSPS for small MWC units were originally promulgated in December 1995 but were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in March 1997. These proposed NSPS are functionally equivalent to the 1995 NSPS.

DATES: *Comments:* Comments on these proposed NSPS and comments on the Information Collection Request (ICR) document associated with these NSPS must be received on or before October 29, 1999.

Public Hearing: A public hearing will be held if requests to speak are received by September 14, 1999. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed NSPS. If requests to speak are received, the public hearing will take place in Research Triangle Park, North Carolina, approximately 30 days after August 30, 1999 and will begin at 10:00 a.m. A message regarding the status of the public hearing may be accessed by calling (919) 541–5264.

ADDRESSES: *Comments:* Submit comments on these proposed NSPS (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention Docket No. A–98–18, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Comments may also be submitted electronically. Send electronic submittals to: ''A-and-R-Docket@epamail.epa.gov''. Submit electronic comments in American Standard Code for Information Interchange (ASCII) format. Avoid the use of special characters and any form of encryption. Electronic comments on these proposed NSPS may be filed online at any Federal Depository Library. For additional information on comments and public hearing see the **SUPPLEMENTARY INFORMATION** section.

Docket: Docket No. A–98–18 for this proposal and associated Docket Nos. A–90–45 and A–89–08 contain supporting information for these NSPS. These dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW, Washington, DC 20460 or by calling (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Stevenson at (919) 541–5264, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, e-mail: stevenson.walt@epa.gov.

SUPPLEMENTARY INFORMATION:

Comment Information

Comments and data will also be accepted on disks in WordPerfect® Version 5.1 or 6.1 file format (or ASCII file format). Address all comments and data for this proposal, whether in paper form or in electronic form such as through e-mail or disk, to Docket No. A–98–18.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it ''Confidential Business Information.'' Send submissions containing proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Ms. Melva Toomer, U.S. EPA, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 944, Durham, NC 27701. Do not submit Confidential Business Information (CBI) electronically.

The EPA will disclose information covered by such a claim of confidentiality only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing

If a public hearing is held, it will take place at EPA's Office of Administration Auditorium, Research Triangle Park, NC, or at an alternate site nearby. Persons interested in presenting oral testimony at the public hearing should notify Ms. Libby Bradley, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5578, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must call Ms. Bradley to verify the time, date, and location of the hearing. The final hearing status and location may be obtained by calling (919) 541–5264.

World Wide Web Site

Electronic versions of this notice, the proposed regulatory text, and other background information are available at the World Wide Web site that EPA has established for these proposed NSPS for small MWC units. The address is: ''http://www.epa.gov/ttn/uatw/129/mwc/rimwc2.html''. For assistance in downloading files, call the EPA's Technology Transfer Network (TTN) HELP line at (919) 541–5384.

Regulated Entities

These NSPS would affect the following categories of sources:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry, Federal government, and State/local/ tribal governments.	562213 92411	4953 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal waste) and do not recover energy from the waste.

This list is not intended to be exhaustive, but rather provides a guide regarding the entities EPA expects to regulate with these NSPS for small MWC units. These NSPS would primarily impact facilities in North American Industrial Classification System (NAICS) codes 562213 and 92411, formerly Standard Industrial Classification (SIC) codes 4953 and 9511, respectively. Not all facilities classified under these codes would be affected. Other types of entities not listed in this table could also be affected. To determine whether your facility would be regulated by these NSPS, carefully examine the applicability criteria in section II.A of this preamble. If you have any questions regarding the applicability of this action to your small MWC unit or any other question or comment, please submit comments to Docket No. A–98–18 or refer to the **FOR FURTHER INFORMATION CONTACT** section.

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

Each section heading of the preamble is presented as a question and the text in the section answers the question.

Abbreviations and Acronyms Used in This Document

ASCII—American Standard Code for Information Interchange
ASME—American Society of Mechanical Engineers
ASTM— American Society for Testing and Materials
CBI—Confidential Business Information
CFR—Code of Federal Regulations
CI—Carbon Injection
EPA—Environmental Protection Agency
FR—Federal Register
ICR—Information Collection Request
MACT—Maximum achievable control technology
MSW—Municipal solid waste
MWC—Municipal waste combustion
NAICS—North American Industrial Classification System
NSPS—New source performance standards
NTTAA—National Technology Transfer and Advancement Act
OAQPS—Office of Air Quality Planning and Standards
OMB—Office of Management and Budget
OP—Office of Policy
Pub. L.—Public Law
RFA—Regulatory Flexibility Act
SBREFA—Small Business Regulatory Enforcement Fairness Act
SD/FF/CI—Spray dryer/fabric filter/carbon injection
SIC—Standard Industrial Classification
SNCR—Selective non-catalytic reduction
TTN—Technology Transfer Network
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code

I. Background Information

On September 20, 1994, EPA proposed NSPS for large and small MWC units under 40 CFR part 60, subpart Eb. Those NSPS covered all MWC units located at plants with an aggregate plant combustion capacity larger than 35 megagrams per day of MSW which is approximately 39 tons per day of MSW. The subpart Eb NSPS for large and small MWC units were promulgated on December 19, 1995.

The 1995 NSPS divided the MWC unit population into MWC units located at large or small MWC plants based on the total aggregate capacity of all MWC units at the MWC plant. The large plant category comprised all MWC units located at MWC plants with aggregate plant combustion capacities greater than 225 megagrams per day (approximately 248 tons per day). The small plant category comprised all MWC units located at MWC plants with aggregate plant combustion capacities of 35 to 225 megagrams per day (approximately 39 to 248 tons per day).

Following promulgation of the 1995 NSPS, a petition for review was filed with the U.S. Court of Appeals for the District of Columbia Circuit regarding the use of aggregate plant capacity as the basis for initial categorization of the MWC unit population. An initial opinion was issued by the court on December 6, 1996 (*Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F. 3d 1395, D.C. Circuit, 1996). The initial opinion would have vacated (canceled) the 1995 NSPS for both large and small MWC units.

The EPA filed a petition for rehearing on February 4, 1997 requesting the court to reconsider the remedy portion of its opinion and to vacate only the NSPS as they apply to small MWC units (units with an individual unit capacity of 35 to 250 tons per day). The court granted EPA's petition, reconsidered its opinion, and issued a revised opinion on March 21, 1997 (*Davis County Solid Waste Management and Recovery District* v. *EPA*, 108 F. 3d 1454, D.C. Circuit, 1997). The revised opinion remanded to EPA the 1995 NSPS for the large MWC unit category for amendment to be consistent with the court's final opinion and vacated these NSPS only as they applied to small MWC units.

Amendments to the 1995 NSPS incorporating the court's final opinion were published on August 25, 1997 (62 FR 45116). The amendments made the subpart Eb NSPS consistent with the court's decision and included other minor technical corrections to improve clarity. The principal change was to remove small MWC units from the applicability of subpart Eb. This was accomplished by increasing the lower size definition (cutoff) for large MWC

plants from 35 megagrams per day on a plant capacity basis to 250 tons per day on a unit capacity basis. No adverse comments were received on the proposal and the amendments became effective on October 24, 1997.

Today's proposal would reestablish NSPS for new small MWC units with combustion capacities of 35 to 250 tons per day of MSW.

II. Summary of These Proposed NSPS

This section summarizes these proposed NSPS for small MWC units, including identification of the subcategories used in this proposal. Overall, these proposed NSPS for small MWC units are functionally equivalent to the 1995 NSPS for small MWC units. These proposed NSPS retain subcategorization by aggregate plant capacity. The following two subcategories are used in these NSPS for small MWC units: (1) Small MWC units located at plants with aggregate plant capacities greater than 250 tons of MSW per day; and (2) small MWC units located at plants with aggregate plant capacities less than or equal to 250 tons of MSW per day. The court allowed this subcategorization as a second step after first categorizing the MWC unit population into large MWC unit (subpart Eb) and small MWC unit (subpart AAAA) categories.

A. What Sources Would Be Regulated by These Proposed NSPS?

Today's proposed NSPS, if promulgated in the current form, would apply to each new MWC unit that has a combustion design capacity of 35 to 250 tons of MSW, and commenced construction after August 30, 1999 or commenced modification or reconstruction 6 months after the date that these NSPS rule are promulgated. Small MWC units that commenced construction on or before August 30, 1999 are not covered under this subpart. These units would be subject to the emission guidelines for existing small MWC units that are proposed as subpart BBBB in a separate part of today's **Federal Register**.

B. What Pollutants Would Be Regulated by These Proposed NSPS?

Section 129 of the Clean Air Act requires EPA to establish numerical emission limits for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, sulfur dioxide, hydrogen chloride, nitrogen oxides, and carbon monoxide. Section 129 specifies that EPA may also:

* * * promulgate numerical emission limitations or provide for the monitoring of post-combustion concentrations of surrogate substances, parameters, or periods of residence times in excess of stated temperatures with respect to pollutants other than those listed [above] * * *

Therefore, in addition to the proposed emission limits, EPA is proposing limits for unit operating load, flue gas temperature at the particulate matter control device inlet, and carbon feed rate as part of the good combustion practice requirements. The EPA is also proposing limits for control of fugitive ash emissions. All of these requirements were contained in the 1995 NSPS.

C. What Is the Format of the Proposed Emission Limits in These NSPS?

The format of the emission limits in these proposed NSPS is identical to the format of the 1995 NSPS. The format is in the form of emission limits based on pollutant concentration. Alternative percentage reduction requirements are provided for mercury, sulfur dioxide, and hydrogen chloride. Opacity and fugitive ash requirements in these NSPS are identical to the 1995 NSPS. In addition to controlling stack emissions, these proposed NSPS incorporate the same good combustion practice requirements (i.e., operator training, operator certification, and operating requirements) that were included in the 1995 NSPS. Additionally, this proposal includes a clarification to the operator certification requirements to address periods when the certified chief facility operators and certified shift supervisors must be offsite. Section III.E provides more detail on these proposed changes. Today's proposal also includes a revision to the carbon injection requirements. See section III.F of this preamble for more detail on the proposed changes.

D. Where Can I Find a More Detailed Summary of These Proposed NSPS?

A concise summary of these proposed NSPS can be found either in: (1) tables 1 and 2 of the proposed subpart AAAA NSPS following this preamble, or (2) the Technical Fact Sheet for this proposal that can be downloaded from the EPA World Wide Web site for small MWC units (http://www.epa.gov/ttn/uatw/129/mwc/rimwc2.html).

III. Changes in These Proposed NSPS Relative to the 1995 NSPS

This section summarizes the changes in these proposed NSPS compared to the 1995 NSPS. Overall, these NSPS are functionally equivalent to the 1995 NSPS, with minimal changes. The most significant change since the 1995 NSPS has been the use of the plain language style for organizing and writing these NSPS. These proposed NSPS retain subcategorization by aggregate plant capacity as allowed by the court.

A. How Has the Conversion to Plain Language Affected These NSPS?

The proposed NSPS are organized and written in the plain language style. This plain language style has not affected the content of these proposed NSPS compared to the 1995 NSPS. However, it has changed their appearance. The EPA considers the question and answer style used with plain language to be more user friendly and understandable to all audiences when compared with previous rules that were not written in this style. To improve the presentation of these NSPS requirements, additional tables have been added.

B. How Has the Size Definition of the Small MWC Unit Category Been Revised?

As a result of the 1997 court decision, both the upper and lower size cutoffs have been changed for the small MWC unit category so that the size cutoffs are based on the capacity of an individual MWC unit rather than on the total capacity of the plant where an MWC unit is located. Additionally, English units of measure are used instead of metric units of measure.

1. Upper Size Cutoff

The upper size cutoff for small MWC units is proposed as 250 tons per day on a unit capacity basis. In the 1995 NSPS, the upper size cutoff was 225 megagrams per day (approximately 248 tons per day) based on total plant capacity. The revised upper size cutoff is consistent with the 1997 court ruling.

2. Lower Size Cutoff

The lower size cutoff is proposed as 35 tons per day on a unit capacity basis to make both the upper size cutoff and lower size cutoff consistent on a unit capacity basis. In the 1995 NSPS, the lower size cutoff for small MWC units was 35 megagrams per day (approximately 39 tons per day) based on total plant capacity.

C. How Has the Population of Small MWC Units Been Subcategorized in These Proposed NSPS?

As stated in the **SUMMARY** section, these proposed NSPS are functionally equivalent to the 1995 NSPS and retain the use of aggregate plant capacity to subcategorize small MWC units within these proposed NSPS. The 1997 court decision allowed EPA to:

* * * exercise its discretion to distinguish among units within a category and create subcategories of small units, for which it can then calculate MACT (maximum achievable

control technology) floors and standards separately.

After first categorizing the MWC unit population into large and small MWC units based on unit capacity, the court allowed EPA, as a second step, to subcategorize by unit location (aggregate plant capacity) at EPA discretion. The EPA has elected to retain the subcategorization used in the 1995 NSPS. Therefore, today's proposal divides the small MWC unit population into two classes: Class I and Class II. Class I comprises small MWC units located at MWC plants with an aggregate plant capacity greater than 250 tons of MSW per day. Class II comprises small MWC units located at MWC plants with an aggregate plant capacity less than or equal to 250 tons of MSW per day. The establishment of these two classes preserves the subcategorization used in the 1995 NSPS.

D. Have Any Changes Been Made to the Emission Limits in These Proposed NSPS?

The proposed emission limits are identical to those established in the 1995 NSPS. Based on a reevaluation of the best controlled units within the small MWC unit population, EPA has concluded that the performance of a SD/FF air pollution control system continues to represent the MACT floor for new small MWC units. The supplemental use of CI continues to represent MACT performance for mercury and dioxins/furans. This technology (SD/FF/CI) is the same technology basis of these NSPS promulgated in 1995. With respect to nitrogen oxides, EPA has concluded that a SNCR air pollution control system would represent the basis of the MACT floor for nitrogen oxides for Class I units. Since these technologies are the same as those used as the basis for the 1995 NSPS, EPA is proposing the same emission limits that were promulgated in the 1995 NSPS. The methods used to determine the new source MACT floors, to select the technology basis of the new source MACT, and to determine the emission limits are identical to the methods described in the **Federal Register** notices and background documents for the 1995 NSPS. The emission limits proposed for Class I units are the same as the emission limits for large MWC units in the 1995 NSPS. The emission limits proposed for Class II units are the same as the emission limits for small MWC units in the 1995 NSPS.

E. Have Any Changes Been Made to the Operator Certification Requirements?

One change is proposed for the operator certification section of the good combustion practice requirements since the 1995 NSPS. In response to questions since the 1995 NSPS were promulgated, EPA has clarified what actions an MWC owner must take to continue operating an MWC unit during times when the certified chief facility operator and certified shift supervisor must be temporarily offsite for an extended period of time when there are no other certified chief facility operators or certified shift supervisors onsite. The EPA has addressed this issue by adding specific requirements for MWC units during times when the certified chief facility operator and certified shift supervisor must be offsite. Different requirements apply depending on the length of time the certified chief facility operator and certified shift supervisor must be offsite. These changes have been added to § 60.1195 of these proposed NSPS.

F. Have Any Changes Been Made to the Operating Practice Requirements?

One change is proposed to the operating practice requirements since the 1995 NSPS. The EPA has clarified how the required level of carbon feed rate is established and how the required monitoring parameter and quarterly carbon usage are used to determine compliance with the operating practice requirements. As discussed below, this results in two enforceable requirements for carbon feed rate.

As in the 1995 NSPS, the MWC plant owner must select an operating parameter (e.g., screw feeder speed) that can be used to calculate the carbon feed rate. During each dioxin/furan and mercury stack test, the total amount of carbon used during each stack test must be measured. The total amount of carbon used during the test is divided by the duration (hours) of the stack test to give an average carbon feed rate in kilograms (or pounds) per hour. The MWC plant owner must also monitor the selected operating parameter during each dioxin/furan and mercury stack test and record the average operating parameter level. After the dioxin/furan and mercury stack tests are complete, the MWC plant owner must establish a relationship between the selected operating parameter and the measured carbon feed rate so that the selected parameter can be used to calculate the carbon feed rate. The selected operating parameter must then be continuously monitored during MWC unit operation and used to calculate the carbon feed rate. The calculated carbon feed rate cannot fall below the carbon feed rate measured during the dioxin/furan or mercury stack test (depending on which test establishes the higher carbon feed rate).

The 1995 NSPS did not clearly specify an averaging time for calculating the carbon feed rate. Because the baseline carbon feed rate is established as the average feed rate during the annual dioxin/furan or mercury stack test, EPA is clarifying that the averaging time used for monitoring the carbon feed rate (using parametric data) should be of similar duration. Therefore, EPA is proposing an 8-hour block averaging period for monitoring carbon feed rates. This would allow facilities to compensate for interruptions in carbon feed rates (due to calibration, malfunction, or repair) by offsetting the interruption with an increase in carbon feed rates within the 8-hour averaging period.

The 1995 NSPS requirements have also been revised and clarified relative to quarterly carbon usage. The EPA is proposing that MWC plant owners calculate required plantwide carbon usage on a quarterly basis and compare this required level of carbon usage to the actual amount of carbon purchased and delivered to the MWC plant. After an average carbon feed rate is established for an MWC unit based on the most recent dioxin/furan or mercury stack test, the required quarterly carbon usage level for the MWC unit is calculated by multiplying the kilogram (or pound) per hour rate by the number of operating hours for each quarter. Next, the required carbon usage for the plant is calculated by summing this value for each small MWC unit located at the plant.

The MWC plant owner must then compare the required quarterly carbon usage level, based on the carbon usage during the stack test and hours of operation, with the amount of carbon purchased and delivered to the MWC plant. The MWC plant owner must demonstrate that they are using the required amount of carbon during each quarter. This comparison is done on a plant basis rather than on a unit basis because MWC units typically use a common carbon storage system; therefore, purchase, delivery, and use of carbon are best tracked on a plant basis. If a plant does not meet the quarterly carbon usage requirement, all units at the plant would be considered out of compliance.

A plant owner can choose to track quarterly carbon usage on an MWC unit basis if that is practical at the plant. The required quarterly carbon usage for each

individual MWC unit would then be compared to the carbon purchased and delivered to that unit. In this case, if an MWC unit does not meet the quarterly carbon usage requirement, only the one MWC unit, instead of the entire MWC plant, would be considered out of compliance.

G. Have Any Changes Been Made to the Monitoring and Stack Testing Requirements?

No changes are proposed to the monitoring and testing requirements contained in the 1995 NSPS. However, to clarify differences between stack testing and continuous emission monitoring requirements, these topics have been addressed in different sections of these NSPS.

H. Have Any Changes Been Made to the Recordkeeping and Reporting Requirements?

No significant changes are proposed to the recordkeeping and reporting requirements since the 1995 NSPS. The EPA is proposing one minor change to clarify recordkeeping and reporting of: (1) 8-hour average calculated carbon feed rate, and (2) quarterly amounts of carbon purchased and delivered. These changes make the reporting and recordkeeping sections consistent with the carbon injection operating practice requirements described above in section III.F.

IV. What Would Be the Impacts Associated With These Proposed NSPS?

This section describes the impacts (i.e., air, water, solid waste, energy, cost, and economic impacts) of these proposed NSPS for small MWC units. These proposed NSPS are functionally equivalent to these NSPS promulgated in 1995. The impact analysis conducted to evaluate the 1995 NSPS still applies and is available at 59 FR 48198. The discussion in this preamble focuses on the air, cost, and economic impacts of these proposed NSPS.

In the preamble for the 1995 NSPS, EPA determined that the water, solid waste, and energy impacts associated with these proposed NSPS were not significant. Because these proposed NSPS are the same as the 1995 NSPS, the water, solid waste, and energy impacts are not significant.

For more detail on the air, cost, and economic impacts of these proposed NSPS, refer to the document entitled ''Economic Impact Analysis: Small Municipal Waste Combustion Units—Section 111/129 Emission Guidelines and New Source Performance Standards'' (Docket No. A–98–18).

A. Air Impacts

Table 1 presents national impacts of air emission reductions for new small MWC units that would result from implementation of these NSPS. These are fifth year impacts based on the assumption that one new plant with two small MWC units would initiate operation each year.

TABLE 1.—NATIONAL AIR EMISSION IMPACTS OF THESE NSPS FOR SMALL NWC UNITS

Pollutant	Air emission reduction	Percent change [a]
Dioxins/furans[b]	0.04 kg/year	99
Cadmium	34 kg/year	99
Lead	3 Mg/year	99
Mercury	77 kg/year	97
Particulate matter	48 Mg/year	98
Sulfur dioxide	38 Mg/year	83
Hydrogen chloride	28 Mg/year	90
Nitrogen oxides	See footnote c	(c)

[a] Percent national emission reduction relative to national baseline emissions that would occur in the absence of these NSPS.
[b] Total mass of tetra-through octachlorinated dibenzo-p-dioxins through dibenzofurans.
[c] For Class I units, nitrogen oxides emission reductions are expected to be approximately 40 percent. Class II units do not have a nitrogen oxides emission limit and are not expected to have any reductions in nitrogen oxides emissions. Since the distribution of new Class I and II units to be constructed are unknown, no mass reductions of nitrogen oxides are presented.

B. Cost and Economic Impacts

Approximately 90 small MWC units located at 41 plants are currently operating in the United States. Based on trends in small MWC unit construction over the past several years, EPA projects that about one new small MWC plant will be constructed each year. It is estimated that most new plants with small MWC units will have, on average, two small MWC units onsite.

To estimate the costs of these proposed NSPS for new small MWC units, EPA has taken into account the various air pollution control equipment that would need to be installed at new small MWC plants to achieve these proposed NSPS. The cost estimates presented here, which are in 1997 dollars, are the projected costs that a new MWC plant with two small MWC units would incur to comply with these NSPS. These costs are based on new small MWC units installing SD/FF/CI as the air pollution control device system.

The method used to estimate the cost and economic impacts of today's proposal is consistent with the method used to estimate the same impacts of the 1995 NSPS. For more details on the cost and economic analysis, refer to the document entitled ''Economic Impact Analysis: Small Municipal Waste Combustion Units—Section 111/129 Emission Guidelines and New Source Performance Standards'' (Docket No. A–98–18).

The EPA projects that the total annual cost (including annualized capital and operating costs) for an MWC plant with two small MWC units to comply with today's proposed NSPS would be approximately $1.6 million. Based on the current trend of MWC plant openings, in 5 years there will be five MWC plants, with ten small MWC units subject to these NSPS. In this case, the total annual cost of these NSPS would be $8.1 million in the 5th year after promulgation of subpart AAAA.

V. Companion Proposal for Existing Small MWC Units

A companion proposal to these NSPS is being published in today's **Federal Register** to establish emission guidelines for existing small MWC units. Following promulgation, the emission guidelines for existing small MWC units will be contained in 40 CFR part 60, subpart BBBB.

VI. Administrative Requirements

A. Public Hearing

In accordance with section 307(d)(5) of the Clean Air Act, EPA will hold a public hearing if individuals request to speak. If a public hearing is held, EPA may ask clarifying questions during the

oral presentation but will not respond to the presentations or comments. To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each. Any member of the public may submit written comments (see the **DATES** and **ADDRESSES** sections). The EPA will consider written comments and supporting information with equivalent weight to any oral statement and supporting information presented at a public hearing.

B. Docket

The docket is an organized and complete file of the administrative record compiled by EPA in the development of this proposal. Material is added to the docket throughout the rule development process. The principal purposes of the docket are: (1) To allow members of the public to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review, except for interagency review material. The docket numbers for these NSPS are Docket No. A–98–18 and associated Docket Nos. A–90–45 and A–89–08, which have been incorporated by reference into Docket No. A–98–18.

C. National Technology Transfer and Advancement Act

Under section 12(d) of the 1995 NTTAA (Pub. L. No. 104–113), all Federal agencies are required to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards for use in process and emissions monitoring. The search for emissions monitoring procedures identified 20 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing available standards, EPA determined that 12 of the candidate consensus standards identified for measuring emissions of pollutants or surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data, and other important technical and policy considerations. Eight of the remaining candidate consensus standards are new standards under development that EPA plans to follow, review and consider adopting at a later date.

One consensus standard, ASTM D6216–98, appears to be practical for EPA use in lieu of EPA performance specification 1 (40 CFR part 60, appendix B). On September 23, 1998, EPA proposed incorporating by reference ASTM D6216–98 under a separate rulemaking (63 FR 50824) that would allow broader use and application of this consensus standard. The EPA plans to complete this action in the near future. For these reasons, EPA does not propose in these NSPS to adopt D6216–98 in lieu of PS–1 requirements as it would be impractical for EPA to act independently from separate rulemaking activities already undergoing notice and comment.

The EPA solicits comment on proposed emission monitoring requirements proposed in these NSPS and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why this regulation should incorporate these voluntary consensus standards, in lieu of EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR part 63, appendix A was used).

The EPA also conducted searches to identify voluntary consensus standards for process monitoring and process operation. Candidate voluntary consensus standards for process monitoring and process operation were identified for: (1) MWC unit load level (steam output), (2) designing, constructing, installing, calibrating, and using nozzles and orifices, and (3) MWC plant operator certification requirements.

One consensus standard by the ASME was identified for use in these proposed NSPS for measurement of MWC unit load level (steam output). The EPA believes this standard is practical to use in these proposed NSPS as the method to measure MWC unit load. The EPA takes comment on the incorporation by reference of ''ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991)'' in these proposed NSPS.

A second consensus standard by ASME was identified for use in these proposed NSPS for designing, constructing, installing, calibrating, and using nozzles and orifices. The EPA believes this standard is practical to use in these proposed NSPS for the design, construction, installation, calibration, and use of nozzles and orifices. The EPA takes comment on the incorporation by reference of ''American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters'', 6th edition (1971).

A third consensus standard by ASME (QRO–1–1994) was identified for use in these proposed NSPS for MWC plant operator certification requirements instead of developing new operator certification procedures. The EPA believes this standard is practical to use in these proposed NSPS that require a chief facility operator and shift supervisor to successfully complete the operator certification procedures developed by ASME.

Tables 3, 4, and 5 of these proposed NSPS list the EPA testing methods and performance standards included in the proposed regulations. Most of these standards have been used by States and industry for more than 10 years. Nevertheless, under § 60.8 of 40 CFR part 60, subpart A, the proposal also allows any State or source to apply to EPA for permission to use alternative methods in place of any of the EPA testing methods or performance standards listed in Tables 3, 4, and 5.

D. Paperwork Reduction Act

The EPA submitted the information collection requirements in these proposed NSPS to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA prepared an ICR document (ICR No. 1900.01) and a copy may be obtained from Sandy Farmer by mail at the OP, Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460, by e-mail at ''farmer.sandy@epamail.epa.gov'', or by calling (202) 260–2740. A copy may also be downloaded from the Internet at: ''http://www.epa.gov/icr''.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW, Washington,

DC 20460, and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA (ICR Tracking No. 1900.01)''. Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 30, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by September 29, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

The information would be used by the Agency to identify new, modified, or reconstructed MWC units subject to these NSPS and to ensure that these MWC units undergo a preconstruction impact analysis. The information would also be used to ensure that the small MWC unit requirements are implemented properly and are complied with on a continuous basis. Records and reports are necessary to enable EPA to identify small MWC units that may not be in compliance with these NSPS. Based on reported information, EPA would decide which small MWC units should be inspected and what records or processes should be inspected. The records that owners and operators of small MWC units maintain would indicate to EPA whether personnel are operating and maintaining control equipment properly.

These NSPS are projected to affect six MWC units at three MWC plants during the first 3 years immediately following promulgation. The estimated average annual burden for industry for the first 3 years after promulgation of these NSPS would be 8,559 person-hours annually at a cost of $219,000 per year to meet the monitoring, recordkeeping, and reporting requirements. The estimated average annualized burden for the implementing agency would be 497 hours during the first 3 years at a cost of $21,000 (including travel expenses).

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act

Section 605 of the RFA (5 U.S.C. 601 *et seq.*) requires Federal agencies to give special consideration to the impact of regulations on small entities, which are small businesses, small organizations, and small governments. In 1996, the SBREFA amended the RFA to strengthen the RFA's analytical and procedural requirements. The SBREFA also made other changes to agency regulatory practice as it affects small businesses and established a new mechanism to expedite congressional review. The major purpose of these acts is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated without compromising the objectives of the Clean Air Act. If a regulation is likely to have a significant economic impact on a substantial number of small entities, the EPA may give special consideration to those small entities when analyzing regulatory alternatives and drafting the regulation. Under these Acts, EPA must generally prepare a regulatory flexibility analysis for a rule subject to notice and comment rulemaking procedures unless the EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Pursuant to the provisions of 5 U.S.C. 605(b), the EPA certifies that these NSPS proposed today will not have a significant economic impact on a substantial number of small entities. The EPA projects that five small MWC plants will begin operation over the next 5 years, averaging one MWC plant per year (Docket No. A–98–18).

Impacts of this proposal are not significant for a substantial number of small entities because few small entities use MWC units for municipal solid waste disposal. The vast majority of small entities use municipal solid waste landfills for disposal. A small entity considering a new small MWC unit would have the opportunity to switch to an alternative municipal solid waste disposal method, such as municipal solid waste landfills, if the costs to comply with these NSPS were considered prohibitive. Thus, the number of small entities that would be significantly impacted by this proposal would not be substantial.

For a summary of the actions that EPA took to involve small entities in the development of these proposed NSPS, refer to the discussion of the Unfunded Mandates Reform Act in section VI.F. of these Administrative Requirements.

F. Unfunded Mandates Reform Act

Title II of the 1995 UMRA, Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule.

The provisions of section 205 allow EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these proposed NSPS do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The economic impact analysis for these NSPS (Docket No. A–98–18) shows that the total annual costs of these regulatory

requirements would be about $8.1 million annually (in 1997 dollars) in the fifth year after promulgation. Thus, these proposed NSPS are not subject to the requirements of sections 202 and 205 of the UMRA. Although these NSPS are not subject to UMRA, EPA did prepare a cost-benefit analysis under section 202 of the UMRA for the 1995 NSPS. For a discussion of how EPA complied with the UMRA for the 1995 NSPS, including extensive consultations with State and local governments, see the preamble to the 1995 NSPS (60 FR 65405–65412, December 19, 1995). Because today's proposed NSPS are functionally equivalent to the 1995 NSPS, no additional consultations were necessary.

G. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of this Executive Order. The Executive Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA considers these proposed NSPS to be ''not significant'' because these NSPS would not have an annual effect on the economy of $100 million or more and do not impose any additional control requirements above the 1995 NSPS. The 1995 NSPS were considered to be ''significant,'' and a full analysis and review was conducted. However, these NSPS proposed today are projected to have an impact of approximately $8.1 million annually in the fifth year after promulgation of these NSPS (Docket No. A–98–18). Therefore, these proposed NSPS are considered to be ''not significant'' under Executive Order 12866 and will not be submitted to OMB for review.

H. Executive Order 12875—Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting with those governments, Executive Order 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

The EPA has concluded that these NSPS may create a mandate on a small number of city and county governments, and that the Federal government would not provide the funds necessary to pay the direct costs incurred by these city and county governments in complying with the mandate. However, today's proposed NSPS do not impose any additional costs or result in any additional control requirements above those considered during promulgation of the 1995 NSPS. In developing the 1995 NSPS, EPA consulted extensively with State and local governments to enable them to provide meaningful and timely input in the development of these NSPS. Because these proposed NSPS are the same as the 1995 NSPS, these previous consultations still apply. For a discussion of EPA's consultations with State and local governments, the nature of the governments' concerns, and EPA's position supporting the need to issue these NSPS, see the preamble to the 1995 NSPS (60 FR 65405–65413, December 19, 1995).

I. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 directs Federal agencies to ''determine whether their programs, policies, and activities have disproportionately high adverse human health or environmental effects on minority populations and low-income populations'' (sections 3–301 and 3–302). In developing these NSPS for small MWC units, EPA analyzed environmental justice issues that may be relevant to this proposal.

The EPA conducted an impact analysis to determine the distribution of minority and low-income groups in the surrounding area where MWC units are located in the United States. The EPA reviewed the demographic characteristics presented in this impact analysis (Docket No. A–90–45) and other analyses. The EPA concluded that there is no significant difference in ethnic makeup or income level in counties where MWC units are located when compared to the average ethnic and income levels of the respective States in which the units are located. It is expected that these trends would also apply to future siting of small MWC units.

These proposed NSPS would require all new small MWC plants to use the most stringent air pollution control technology currently available for small MWC units. This upgrade in air pollution control technology for new small MWC units would result in lowered air emissions (compared to an absence of NSPS) from small MWC units, thereby improving human health and the environment in areas where small MWC units are located. Additionally, siting requirements for new small MWC units include two public meetings, which would allow the public to comment on the siting of any new small MWC unit before construction begins.

J. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks so that the analysis required under section 5–501 of the

Executive Order has the potential to influence the regulation.

These NSPS are not subject to Executive Order 13045 because they are not economically significant as defined in Executive Order 12866 and because they are based on technology performance and not on health and safety risks. A children's risk analysis was not performed for these NSPS because no alternative technologies exist that would provide greater stringency at a reasonable cost. Therefore, the results of any such analysis would have no impact on the stringency decision.

K. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting with those governments, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

These NSPS do not significantly or uniquely affect the communities of Indian tribal governments. The EPA is not aware of any existing or planned small MWC units located in Indian territory. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these NSPS.

L. Executive Memorandum on Plain Language in Government Writing

On June 1, 1998, President Clinton issued an Executive Memorandum entitled ''Plain Language in Government Writing,'' which instructs Federal agencies to use plain language in all proposed and final rulemakings by January 1, 1999. Therefore, these proposed NSPS are organized and written in a plain language format and style. This plain language format and style do not alter the content or intent of this proposal compared to the 1995 NSPS. The EPA considers this plain language format and style to be more user friendly and understandable to all audiences when compared with previous proposals that were not written in plain language.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Municipal waste combustion.

Dated: August 6, 1999.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7429, 7601, and 7602.

2. Part 60 is amended by adding a new subpart AAAA to read as follows:

Subpart AAAA—Standards of Performance for New Stationary Sources: Small Municipal Waste Combustion Units

Sec.

Introduction

§ 60.1000 What does this subpart do?

This subpart establishes new source performance standards for new small municipal waste combustion units.

§ 60.1005 When does this subpart become effective?

This subpart takes effect [the date 6 months after publication of the final rule in the **Federal Register**]. Some of the requirements in this subpart apply to municipal waste combustion unit planning and must be completed before construction is commenced on the municipal waste combustion unit. In particular, the preconstruction requirements in §§ 60.1050 through 60.1150 must be completed prior to commencing construction. Other requirements (such as the emission limits) apply when the municipal waste combustion unit begins operation.

Applicability

§ 60.1010 Does this subpart apply to my municipal waste combustion unit?

Yes, if your municipal waste combustion unit meets two criteria:

(a) Your municipal waste combustion unit is a new municipal waste combustion unit.

(b) Your municipal waste combustion unit has the capacity to combust at least 35 tons per day but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

§ 60.1015 What is a new municipal waste combustion unit?

(a) A new municipal waste combustion unit is a municipal waste combustion unit that meets either of two criteria:

(1) Commenced construction after [date the final rule is published in the **Federal Register**].

(2) Commenced reconstruction or modification at least 6 months after [date the final rule is published].

(b) This subpart does not apply to your municipal waste combustion unit if you make physical or operational changes to an existing municipal waste

combustion unit primarily to comply with the emission guidelines in subpart BBBB of this part. Such changes do not qualify as reconstruction or modification under this subpart.

§ 60.1020 Does this subpart allow any exemptions?

(a) *Small municipal waste combustion units that combust less than 11 tons per day.* You are exempt from this subpart if you meet four requirements:

(1) Your municipal waste combustion unit is subject to a federally enforceable operating permit limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(2) You notify the Administrator that the unit qualifies for this exemption.

(3) You provide the Administrator with a copy of the federally enforceable permit.

(4) You keep daily records of the amount of municipal solid waste combusted.

(b) *Small power production facilities.* You are exempt from this subpart if you meet four requirements:

(1) Your unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) Your unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(3) You notify the Administrator that the unit qualifies for this exemption.

(4) You provide the Administrator with documentation that the unit qualifies for this exemption.

(c) *Cogeneration facilities.* You are exempt from this subpart if you meet four requirements:

(1) Your unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) Your unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You notify the Administrator that the unit qualifies for this exemption.

(4) You provide the Administrator with documentation that the unit qualifies for this exemption.

(d) *Municipal waste combustion units that combust only tires.* You are exempt from this subpart if you meet three requirements:

(1) Your municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can cofire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(2) You notify the Administrator that the unit qualifies for this exemption.

(3) You provide the Administrator with documentation that the unit qualifies for this exemption.

(e) *Hazardous waste combustion units.* You are exempt from this subpart if you get a permit for your unit under section 3005 of the Solid Waste Disposal Act.

(f) *Materials recovery units.* You are exempt from this subpart if your unit combusts waste mainly to recover metals. Primary and secondary smelters qualify for this exemption.

(g) *Cofired combustors.* You are exempt from this subpart if you meet four requirements:

(1) Your unit has a federally enforceable permit limiting the combustion of municipal solid waste to 30 percent of the total fuel input by weight.

(2) You notify the Administrator that the unit qualifies for this exemption.

(3) You provide the Administrator with a copy of the federally enforceable permit.

(4) You record the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(h) *Plastics/rubber recycling units.* You are exempt from this subpart if you meet four requirements:

(1) Your pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined under ''Definitions'' (§ 60.1465).

(2) You record the weights, each quarter, of plastics, rubber, and rubber tires processed.

(3) You record the weights, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(4) You keep the name and address of the purchaser of these feed stocks.

(i) *Units that combust fuels made from products of plastics/rubber recycling plants.* You are exempt from this subpart if you meet two requirements:

(1) Your unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feedstocks produced by plastics/rubber recycling units.

(2) Your unit does not combust any other municipal solid waste.

(j) *Cement kilns.* You are exempt from this subpart if your cement kiln combusts municipal solid waste.

(k) *Air curtain incinerators.* If your air curtain incinerator (see § 60.1465 for definition) combusts 100 percent yard waste, you must only meet the requirements under ''Air Curtain Incinerators That Burn 100 Percent Yard Waste'' (§§ 60.1435 through 60.1455).

§ 60.1025 Do subpart E new source performance standards also apply to my municipal waste combustion unit?

If this subpart (subpart AAAA) applies to your municipal waste combustion unit, then subpart E does not apply to your municipal waste combustion unit.

§ 60.1030 Can the Administrator delegate authority to enforce these Federal standards to a State agency?

Yes. The Administrator can delegate all authorities in all sections of this subpart to the State for direct State enforcement.

§ 60.1035 How are the standards structured?

The standards contain five major components:

(a) Preconstruction requirements.

(1) Materials separation plan.

(2) Siting analysis.

(b) Good combustion practices.

(1) Operator training.

(2) Operator certification.

(3) Operating requirements.

(c) Emission limits.

(d) Monitoring and stack testing.

(e) Recordkeeping and reporting.

§ 60.1040 Do all five components of the standards apply at the same time?

No. You must meet the preconstruction requirements before you commence construction of the municipal waste combustion unit. After the municipal waste combustion unit begins operation, you must meet all of the good combustion practices, emission limits, monitoring, stack testing, and most recordkeeping and reporting requirements.

§ 60.1045 Are there different subcategories of small municipal waste combustion units within this subpart?

(a) Yes. This subpart subcategorizes small municipal waste combustion units into two groups based on the aggregate capacity of the municipal waste combustion plant and the type of municipal waste combustion unit as follows:

(1) *Class I Units.* These are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity of more than 250 tons per day of municipal solid waste. (See the definition of ''municipal waste combustion plant capacity'' in § 60.1465 for specification of which units at a plant are included in the aggregate capacity calculation.)

(2) *Class II Units.* These are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate

plant combustion capacity no more than 250 tons per day of municipal solid waste. (See the definition of ''municipal waste combustion plant capacity'' in § 60.1465 for specification of which units at a plant are included in the aggregate capacity calculation.)

(b) The requirements for Class I and Class II units are identical except for two items:

(1) Class I units have a nitrogen oxide emission limit. Class II units do not have a nitrogen oxide emission limit (see table 1 of this subpart). Additionally, Class I units have continuous emission monitoring, recordkeeping, and reporting requirements for nitrogen oxides.

(2) Class II units are eligible for the reduced testing option provided in § 60.1305.

Preconstruction Requirements: Materials Separation Plan

§ 60.1050 Who must submit a materials separation plan?

(a) You must prepare a materials separation plan for your municipal waste combustion unit if you plan to commence construction of a new small municipal waste combustion unit after [the date of publication of the final rule].

(b) If you commence construction of your municipal waste combustion unit after August 30, 1999 but before [the publication date of the final rule], you are not required to prepare the materials separation plan specified in this subpart.

(c) You must prepare a materials separation plan if you are required to submit an initial application for a construction permit, under 40 CFR part 51, subpart I, or part 52, as applicable, for the reconstruction or modification of your municipal waste combustion unit.

§ 60.1055 What is a materials separation plan?

The plan identifies a goal and an approach for separating certain components of municipal solid waste for a given service area prior to waste combustion and making them available for recycling.

§ 60.1060 What steps must I complete for my materials separation plan?

(a) For your materials separation plan, you must complete nine steps:

(1) Prepare a draft materials separation plan.

(2) Make your draft plan available to the public.

(3) Hold a public meeting on your draft plan.

(4) Prepare responses to public comments received during the public comment period on your draft plan.

(5) Prepare a revised materials separation plan.

(6) Discuss the revised plan at the public meeting for review of the siting analysis.

(7) Prepare responses to public comments received on your revised plan.

(8) Prepare a final materials separation plan.

(9) Submit the final materials separation plan.

(b) You may use analyses conducted under the requirements of 40 CFR part 51, subpart I, or part 52, to comply with some of the materials separation requirements of this subpart.

§ 60.1065 What must I include in my draft materials separation plan?

(a) You must prepare and submit a draft materials separation plan for your municipal waste combustion unit and its service area.

(b) Your draft materials separation plan must identify a goal and an approach for separating certain components of municipal solid waste for a given service area prior to waste combustion and making them available for recycling. A materials separation plan may include such elements as dropoff facilities, buy-back or deposit-return incentives, programs for curbside pickup, and centralized systems for mechanical separation.

(c) Your materials separation plan may include different goals or approaches for different subareas in the service area.

(d) Your materials separation plan may exclude materials separation activities for certain subareas or, if warranted, the entire service area.

§ 60.1070 How do I make my draft materials separation plan available to the public?

(a) Distribute your draft materials separation plan to the main public libraries in the area where you will construct the municipal waste combustion unit.

(b) Publish a notice of a public meeting in the main newspapers that serve these two areas:

(1) The area where you will construct the municipal waste combustion unit.

(2) The areas where the waste that your municipal waste combustion unit combusts will be collected.

(c) Include six items in your notice of the public meeting:

(1) The date of the public meeting.

(2) The time of the public meeting.

(3) The location of the public meeting.

(4) The location of the public libraries where the public can find your materials separation plan. Include the normal business hours of each library.

(5) An agenda of the topics that will be discussed at the public meeting.

(6) The beginning and ending dates of the public comment period on your draft materials separation plan.

§ 60.1075 When must I accept comments on the materials separation plan?

(a) You must accept verbal comments at the public meeting.

(b) You must accept written comments anytime during the period that begins on the date the document is distributed to the main public libraries and ends 30 days after the date of the public meeting.

§ 60.1080 Where and when must I hold a public meeting on my draft materials separation plan?

(a) You must hold a public meeting and accept comments on your draft materials separation plan.

(b) You must hold the public meeting in the county where you will construct the municipal waste combustion unit.

(c) You must schedule the public meeting to occur at least 30 days after you make your draft materials separation plan available to the public.

(d) You may combine this public meeting with any other public meeting required as part of any other Federal, State, or local permit review. However, you may not combine it with the public meeting required for the siting analysis under ''Preconstruction Requirements: Siting Analysis'' (§ 60.1140).

(e) You are encouraged to address eight topics at the public meeting for your draft materials separation plan:

(1) Expected size of the service area for your municipal waste combustion unit.

(2) Amount of waste you will collect in the service area.

(3) Types and estimated amounts of materials proposed for separation.

(4) Methods proposed for materials separation.

(5) Amount of residual waste for disposal.

(6) Alternate disposal methods for handling the residual waste.

(7) Where your responses to public comments on the draft materials separation plan will be available for inspection.

(8) Where your revised materials separation plan will be available for inspection.

(f) You must prepare a transcript of the public meeting on your draft materials separation plan.

§ 60.1085 What must I do with any public comments I receive during the public comment period on my draft materials separation plan?

You must do three steps:

(a) Prepare written responses to any public comments you received during the public comment period. Summarize these responses to public comments in a document that is separate from your revised materials separation plan.

(b) Make the comment response document available to the public in the service area where you will construct your municipal waste combustion unit. You must distribute the document at least to the main public libraries used to announce the public meeting.

(c) Prepare a revised materials separation plan for the municipal waste combustion unit that includes, as appropriate, changes made in response to any public comments you received during the public comment period.

§ 60.1090 What must I do with my revised materials separation plan?

You must do two tasks:

(a) As specified under ''Reporting'' (§ 60.1375), submit five items to the Administrator by the date you submit the application for a construction permit under 40 CFR part 51, subpart I, or part 52. (If you are not required to submit an application for a construction permit under 40 CFR part 51, subpart I, or part 52, submit five items to the Administrator by the date of your notice of construction under § 60.1380):

(1) Your draft materials separation plan.

(2) Your revised materials separation plan.

(3) Your notice of the public meeting for your draft materials separation plan.

(4) A transcript of the public meeting on your draft materials separation plan.

(5) The document that summarizes your responses to the public comments you received during the public comment period on your draft materials separation plan.

(b) Make your revised materials separation plan available to the public as part of the siting analysis procedures under ''Preconstruction Requirements: Siting Analysis'' (§ 60.1130).

§ 60.1095 What must I include in the public meeting on my revised materials separation plan?

As part of the public meeting for review of the siting analysis, as specified under ''Preconstruction Requirements: Siting Analysis'' (§ 60.1140), you must discuss two areas:

(a) Differences between your revised materials separation plan and your draft materials separation plan discussed at the first public meeting (§ 60.1080).

(b) Questions about your revised materials separation plan.

§ 60.1100 What must I do with any public comments I receive on my revised materials separation plan?

(a) Prepare written responses to any public comments and include them in the document that summarizes your responses to public comments on the siting analysis.

(b) Prepare a final materials separation plan that includes, as appropriate, changes made in response to any public comments you received on your revised materials separation plan.

§ 60.1105 How do I submit my final materials separation plan?

As specified under ''Reporting'' (§ 60.1380), submit your final materials separation plan to the Administrator as part of the notice of construction for the municipal waste combustion unit.

Preconstruction Requirements: Siting Analysis

§ 60.1110 Who must submit a siting analysis?

(a) You must prepare a siting analysis if you plan to commence construction of a small municipal waste combustion unit after [the date of publication of the final rule].

(b) If you commence construction on your municipal waste combustion unit after August 30, 1999, but before [the date of publication of the final rule], you are not required to prepare the siting analysis specified in this subpart.

(c) You must prepare a siting analysis if you are required to submit an initial application for a construction permit, under 40 CFR part 51, subpart I, or part 52, as applicable, for the reconstruction or modification of your municipal waste combustion unit.

§ 60.1115 What is a siting analysis?

The siting analysis addresses how your municipal waste combustion unit affects ambient air quality, visibility, soils, vegetation, and other relevant factors. This analysis can be used to determine whether the benefits of your proposed facility significantly outweigh the environmental and social costs resulting from its location and construction. This analysis must also consider other major industrial facilities near the proposed site.

§ 60.1120 What steps must I complete for my siting analysis?

(a) For your siting analysis, you must complete five steps:

(1) Prepare an analysis.

(2) Make your analysis available to the public.

(3) Hold a public meeting on your analysis.

(4) Prepare responses to public comments received on your analysis.

(5) Submit your analysis.

(b) You may use analyses conducted under the requirements of 40 CFR part 51, subpart I, or part 52, to comply with some of the siting analysis requirements of this subpart.

§ 60.1125 What must I include in my siting analysis?

(a) Include an analysis of how your municipal waste combustion unit affects these four areas:

(1) Ambient air quality.

(2) Visibility.

(3) Soils.

(4) Vegetation.

(b) Include an analysis of alternatives for controlling air pollution that minimize potential risks to the public health and the environment.

§ 60.1130 How do I make my siting analysis available to the public?

(a) Distribute your siting analysis and revised materials separation plan to the main public libraries in the area where you will construct your municipal waste combustion unit.

(b) Publish a notice of a public meeting in the main newspapers that serve these two areas:

(1) The area where you will construct your municipal waste combustion unit.

(2) The areas where the waste that your municipal waste combustion unit combusts will be collected.

(c) Include six items in your notice of the public meeting:

(1) The date of the public meeting.

(2) The time of the public meeting.

(3) The location of the public meeting.

(4) The location of the public libraries where the public can find your siting analysis and revised materials separation plan. Include the normal business hours of each library.

(5) An agenda of the topics that will be discussed at the public meeting.

(6) The beginning and ending dates of the public comment period on your siting analysis and revised materials separation plan.

§ 60.1135 When must I accept comments on the siting analysis and revised materials separation plan?

(a) You must accept verbal comments at the public meeting.

(b) You must accept written comments anytime during the period that begins on the date the document is distributed to the main public libraries and ends 30 days after the date of the public meeting.

§ 60.1140 Where and when must I hold a public meeting on the siting analysis?

(a) You must hold a public meeting to discuss and accept comments on your siting analysis and your revised materials separation plan.

(b) You must hold the public meeting in the county where you will construct your municipal waste combustion unit.

(c) You must schedule the public meeting to occur at least 30 days after you make your siting analysis and revised materials separation available to the public.

(d) You must prepare a transcript of the public meeting on your siting analysis.

§ 60.1145 What must I do with any public comments I receive during the public comment period on my siting analysis?

You must do three things:

(a) Prepare written responses to any public comments on your siting analysis and the revised materials separation plan you received during the public comment period. Summarize these responses to public comments in a document that is separate from your materials separation plan and siting analysis.

(b) Make the comment response document available to the public in the service area where you will construct your municipal waste combustion unit. You must distribute the document at least to the main public libraries used to announce the public meeting for the siting analysis.

(c) Prepare a revised siting analysis for the municipal waste combustion unit that includes, as appropriate, changes made in response to any public comments you received during the public comment period.

§ 60.1150 How do I submit my siting analysis?

As specified under ''Reporting'' (§ 60.1380), submit four items as part of the notice of construction:

(a) Your siting analysis.

(b) Your notice of the public meeting on your siting analysis.

(c) A transcript of the public meeting on your siting analysis.

(d) The document that summarizes your responses to the public comments you received during the public comment period.

Good Combustion Practices: Operator Training

§ 60.1155 What types of training must I do?

There are two types of required training:

(a) Training of operators of municipal waste combustion units using the EPA or a State-approved training course.

(b) Training of plant personnel using a plant-specific training course.

§ 60.1160 Who must complete the operator training course? By when?

(a) Three types of employees must complete the EPA or State-approved operator training course:

(1) Chief facility operators.

(2) Shift supervisors.

(3) Control room operators.

(b) These employees must complete the operator training course by the later of three dates:

(1) Six months after your municipal waste combustion unit starts up.

(2) One year after [date of publication of the final rule].

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

§ 60.1165 Who must complete the plant-specific training course?

All employees with responsibilities that affect how a municipal waste combustion unit operates must complete the plant-specific training course. Include at least six types of employees:

(a) Chief facility operators.

(b) Shift supervisors.

(c) Control room operators.

(d) Ash handlers.

(e) Maintenance personnel.

(f) Crane or load handlers.

§ 60.1170 What plant-specific training must I provide?

For plant-specific training, you must do four things:

(a) For training at a particular plant, develop a specific operating manual for that plant by the later of two dates:

(1) Six months after your municipal waste combustion unit starts up.

(2) One year after [date of publication of the final rule].

(b) Establish a program to review the plant-specific operating manual with people whose responsibilities affect the operation of your municipal waste combustion unit. Complete the initial review by the later of three dates:

(1) Six months after your municipal waste combustion unit starts up.

(2) One year after [date of publication of the final rule].

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) Update your manual annually.

(d) Review your manual with staff annually.

§ 60.1175 What information must I include in the plant-specific operating manual?

You must include 11 items in the operating manual for your plant:

(a) A summary of all applicable standards in this subpart.

(b) A description of the basic combustion principles that apply to municipal waste combustion units.

(c) Procedures for receiving, handling, and feeding municipal solid waste.

(d) Procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustion unit.

(e) Procedures for maintaining a proper level of combustion air supply.

(f) Procedures for operating the municipal waste combustion unit within the standards contained in this subpart.

(g) Procedures for responding to periodic upset or off-specification conditions.

(h) Procedures for minimizing carryover of particulate matter.

(i) Procedures for handling ash.

(j) Procedures for monitoring emissions from the municipal waste combustion unit.

(k) Procedures for recordkeeping and reporting.

§ 60.1180 Where must I keep the plant-specific operating manual?

You must keep your operating manual in an easily accessible location at your plant. It must be available for review or inspection by all employees who must review it and by the Administrator.

Good Combustion Practices: Operator Certification

§ 60.1185 What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?

(a) Each chief facility operator and shift supervisor must obtain and keep a current provisional operator certification from the American Society of Mechanical Engineers (QRO–1–1994 (incorporated by reference in § 60.17 of subpart A of this part)) or a current provisional operator certification from your State certification program.

(b) Each chief facility operator and shift supervisor must obtain a provisional certification by the later of three dates:

(1) Six months after the municipal waste combustion unit starts up.

(2) One year after [date of publication of the final rule].

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

(c) Each chief facility operator and shift supervisor must take one of three actions:

(1) Obtain a full certification from the American Society of Mechanical Engineers or a State certification program in your State.

(2) Schedule a full certification exam with the American Society of Mechanical Engineers (QRO–1–1994 (incorporated by reference in § 60.17 of subpart A of this part)).

(3) Schedule a full certification exam with your State certification program.

(d) The chief facility operator and shift supervisor must obtain the full certification or be scheduled to take the certification exam by the later of three dates:

(1) Six months after the municipal waste combustion unit starts up.

(2) One year after [date of publication of the final rule].

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

§ 60.1190 After the required date for operator certification, who may operate the municipal waste combustion unit?

After the required date for full or provisional certifications, you must not operate your municipal waste combustion unit unless one of four employees is on duty:

(a) A fully certified chief facility operator.

(b) A provisionally certified chief facility operator who is scheduled to take the full certification exam.

(c) A fully certified shift supervisor.

(d) A provisionally certified shift supervisor who is scheduled to take the full certification exam.

§ 60.1195 What if all the certified operators must be temporarily offsite?

If the certified chief facility operator and certified shift supervisor both must leave your municipal waste combustion unit, a provisionally certified control room operator at the municipal waste combustion unit may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor are away, you must meet one of three criteria:

(a) When the certified chief facility operator and certified shift supervisor are both offsite for less than 8 hours, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator.

(b) When the certified chief facility operator and certified shift supervisor are offsite for more than 8 hours, but less than 2 weeks, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must record the period when the certified chief facility operator and certified shift supervisor are offsite and include this information in the annual report as specified under § 60.1410(l).

(c) When the certified chief facility operator and certified shift supervisor are offsite for more than 2 weeks, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must take two actions:

(1) Notify the Administrator in writing. In the notice, state what caused the absence and what you are doing to ensure that a certified chief facility operator or certified shift supervisor is onsite.

(2) Submit a status report and corrective action summary to the Administrator every 4 weeks following the initial notification. If the Administrator notifies you that your status report or corrective action summary is disapproved, the municipal waste combustion unit may continue operation for 90 days, but then must cease operation. If corrective actions are taken in the 90-day period such that the Administrator withdraws the disapproval, municipal waste combustion unit operation may continue.

Good Combustion Practices: Operating Requirements

§ 60.1200 What are the operating practice requirements for my municipal waste combustion unit?

(a) You must not operate your municipal waste combustion unit at loads greater than 110 percent of the maximum demonstrated unit load of the municipal waste combustion unit (4-hour block average), as specified under ''Definitions'' (§ 60.1465).

(b) You must not operate your municipal waste combustion unit so that the temperature at the inlet of the particulate matter control device exceeds 17°C above the maximum demonstrated temperature of the particulate matter control device (4-hour block average), as specified under ''Definitions'' (§ 60.1465).

(c) If your municipal waste combustion unit uses activated carbon to control dioxin/furan or mercury emissions, you must maintain an 8-hour block average carbon feed rate at or above the highest average level established during the most recent dioxin/furan or mercury test.

(d) If your municipal waste combustion unit uses activated carbon to control dioxin/furan or mercury emissions, you must evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to your municipal waste combustion plant must be at or above the required quarterly usage of carbon. At your option, you may choose to evaluate required quarterly carbon usage on a municipal waste combustion unit basis for each individual municipal waste combustion unit at your plant. Calculate the required quarterly usage of carbon using the appropriate equation in § 60.1460(f).

(e) Your municipal waste combustion unit is exempt from limits on load level, temperature at the inlet of the particulate matter control device, and carbon feed rate during any of five situations:

(1) During your annual tests for dioxins/furans.

(2) During your annual mercury tests (for carbon feed rate requirements only).

(3) During the 2 weeks preceding your annual tests for dioxins/furans.

(4) During the 2 weeks preceding your annual mercury tests (for carbon feed rate requirements only).

(5) Whenever the Administrator or delegated State authority permits you to do any of five activities:

(i) Evaluate system performance.

(ii) Test new technology or control technologies.

(iii) Perform diagnostic testing.

(iv) Perform other activities to improve the performance of your municipal waste combustion unit.

(v) Perform other activities to advance the state of the art for emission controls for your municipal waste combustion unit.

§ 60.1205 What happens to the operating requirements during periods of startup, shutdown, and malfunction?

(a) The operating requirements of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

Emission Limits

§ 60.1210 What pollutants are regulated by this subpart?

Eleven pollutants, in four groupings, are regulated:

(a) *Organics.* Dioxins/furans.

(b) *Metals.*

(1) Cadmium.

(2) Lead.

(3) Mercury.

(4) Opacity.

(5) Particulate matter.

(c) *Acid gases.*

(1) Hydrogen chloride.

(2) Nitrogen oxides.

(3) Sulfur dioxide.
(d) *Other.*
(1) Carbon monoxide.
(2) Fugitive ash.

§ 60.1215 What emission limits must I meet? By when?

You must meet the emission limits specified in tables 1 and 2 of this subpart. You must meet these limits 60 days after your municipal waste combustion unit reaches the maximum load level but no later than 180 days after its initial startup.

§ 60.1220 What happens to the emission limits during periods of startup, shutdown, and malfunction?

(a) The emission limits of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

Continuous Emission Monitoring

§ 60.1225 What types of continuous emission monitoring must I perform?

To continuously monitor emissions, you must perform four tasks:

(a) Install continuous emission monitoring systems for certain gaseous pollutants.

(b) Make sure your continuous emission monitoring systems are operating correctly.

(c) Make sure you obtain the minimum amount of monitoring data.

(d) Install a continuous opacity monitoring system.

§ 60.1230 What continuous emission monitoring systems must I install for gaseous pollutants?

(a) You must install, calibrate, maintain, and operate continuous emission monitoring systems for oxygen (or carbon dioxide), sulfur dioxide, and carbon monoxide. If you operate a Class I municipal waste combustion unit, also install, calibrate, maintain, and operate a continuous emission monitoring system for nitrogen oxides. Install the continuous emission monitoring system for sulfur dioxide and nitrogen oxides at the outlet of the air pollution control device.

(b) You must install, evaluate, and operate each continuous emission monitoring system according to the ''Monitoring Requirements'' in § 60.13 of subpart A of this part.

(c) You must monitor the oxygen (or carbon dioxide) concentration at each location where you monitor sulfur dioxide and carbon monoxide. Additionally, if you operate a Class I municipal waste combustion unit, you must also monitor the oxygen (or carbon dioxide) concentration at the location where you monitor nitrogen oxides.

(d) You may choose to monitor carbon dioxide instead of oxygen as a diluent gas. If you choose to monitor carbon dioxide, then an oxygen monitor is not required, and you must follow the requirements in § 60.1255.

(e) If you choose to demonstrate compliance by monitoring the percent reduction of sulfur dioxide, you must also install a continuous emission monitoring system for sulfur dioxide and oxygen (or carbon dioxide) at the inlet of the air pollution control device.

§ 60.1235 How are the data from the continuous emission monitoring systems used?

You must use data from the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and carbon monoxide to demonstrate continuous compliance with the emission limits specified in tables 1 and 2 of this subpart. To demonstrate compliance for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, see § 60.1290.

§ 60.1240 How do I make sure my continuous emission monitoring systems are operating correctly?

(a) Conduct initial, daily, quarterly, and annual evaluations of your continuous emission monitoring systems that measure oxygen (or carbon dioxide), sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide.

(b) Complete your initial evaluation of the continuous emission monitoring systems within 60 days after your municipal waste combustion unit reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup.

(c) For initial and annual evaluations, collect data concurrently (or within 30 to 60 minutes) using your oxygen (or carbon dioxide) continuous emission monitoring system, your sulfur dioxide, nitrogen oxides, or carbon monoxide continuous emission monitoring systems, as appropriate, and the appropriate test methods specified in table 3 of this subpart. Collect these data during each initial and annual evaluation of your continuous emission monitoring systems following the applicable performance specifications in appendix B of this part. Table 4 of this subpart shows the performance specifications that apply to each continuous emission monitoring system.

(d) Follow the quality assurance procedures in Procedure 1 of appendix F of this part for each continuous emission monitoring system. These procedures include daily calibration drift and quarterly accuracy determinations.

§ 60.1245 Am I exempt from any appendix B or appendix F requirements to evaluate continuous emission monitoring systems?

Yes, the accuracy tests for your sulfur dioxide continuous emission monitoring system require you to also evaluate your oxygen (or carbon dioxide) continuous emission monitoring system. Therefore, your oxygen (or carbon dioxide) continuous emission monitoring system is exempt from two requirements:

(a) Section 2.3 of performance specification 3 in appendix B of this part (relative accuracy requirement).

(b) Section 5.1.1 of appendix F of this part (relative accuracy test audit).

§ 60.1250 What is my schedule for evaluating continuous emission monitoring systems?

(a) Conduct annual evaluations of your continuous emission monitoring systems no more than 12 months after the previous evaluation was conducted.

(b) Evaluate your continuous emission monitoring systems daily and quarterly as specified in appendix F of this part.

§ 60.1255 What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?

You must establish the relationship between oxygen and carbon dioxide during the initial evaluation of your continuous emission monitoring system. You may reestablish the relationship during annual evaluations. To establish the relationship use three procedures:

(a) Use EPA Reference Method 3 or 3A to determine oxygen concentration at the location of your carbon dioxide monitor.

(b) Conduct at least three test runs for oxygen. Make sure each test run represents a 1-hour average and that sampling continues for at least 30 minutes in each hour.

(c) Use the fuel-factor equation in EPA Reference Method 3B to determine the relationship between oxygen and carbon dioxide.

§ 60.1260 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is this requirement enforceable?

(a) Where continuous emission monitoring systems are required, obtain 1-hour arithmetic averages. Make sure the averages for sulfur dioxide, nitrogen oxides, and carbon monoxide are in parts per million by dry volume at 7 percent oxygen (or the equivalent carbon dioxide level). Use the 1-hour

averages of oxygen (or carbon dioxide) data from your continuous emission monitoring system to determine the actual oxygen (or carbon dioxide) level and to calculate emissions at 7 percent oxygen (or the equivalent carbon dioxide level).

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average. Section 60.13(e)(2) of subpart A of this part requires your continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.

(c) Obtain valid 1-hour averages for 75 percent of the operating hours per day and for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation of this data collection requirement regardless of the emission level monitored, and you must notify the Administrator according to § 60.1410(e).

(e) If you do not obtain the minimum data required in paragraphs (a) and (c) of this section, you must still use all valid data from the continuous emission monitoring systems in calculating emission concentrations and percent reductions in accordance with § 60.1265.

§ 60.1265 How do I convert my 1-hour arithmetic averages into the appropriate averaging times and units for this standard?

(a) Use the equation in § 60.1460(a) to calculate emissions at 7 percent oxygen.

(b) Use EPA Reference Method 19, section 4.3, to calculate the daily geometric average concentrations of sulfur dioxide emissions. If you are monitoring the percent reduction of sulfur dioxide, use EPA Reference Method 19, section 5.4, to determine the daily geometric average percent reduction of potential sulfur dioxide emissions.

(c) If you operate a Class I municipal waste combustion unit, use EPA Reference Method 19, section 4.1, to calculate the daily arithmetic average for concentrations of nitrogen oxides.

(d) Use EPA Reference Method 19, section 4.1, to calculate the 4-hour or 24-hour daily block averages (as applicable) for concentrations of carbon monoxide.

§ 60.1270 What is required for my continuous opacity monitoring system and how are the data used?

(a) Install, calibrate, maintain, and operate a continuous opacity monitoring system.

(b) Install, evaluate, and operate each continuous opacity monitoring system according to § 60.13 of subpart A of this part.

(c) Complete an initial evaluation of your continuous opacity monitoring system according to performance specification 1 in appendix B of this part. Complete this evaluation within 60 days after your municipal waste combustion unit reaches the maximum load level at which it will operate, but no more than 180 days after its initial startup.

(d) Complete each annual evaluation of your continuous opacity monitoring system no more than 12 months after the previous evaluation.

(e) Use tests conducted according to EPA Reference Method 9, as specified in § 60.1300, to determine compliance with the emission limit for opacity in table 1 of this subpart. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the limit on opacity emissions.

§ 60.1275 What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?

Use the required span values and applicable performance specifications in table 4 of this subpart.

§ 60.1280 What must I do if my continuous emission monitoring system is temporarily unavailable to meet the data collection requirements?

Refer to table 5 of this subpart. It shows alternate methods for collecting data when these systems malfunction or when repairs, calibration checks, or zero and span checks keep you from collecting the minimum amount of data.

Stack Testing

§ 60.1285 What types of stack tests must I conduct?

Conduct initial and annual stack tests to measure the emission levels of dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

§ 60.1290 How are the stack test data used?

You must use results of stack tests for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash to demonstrate compliance with the emission limits in table 1 of this subpart. To demonstrate compliance for carbon monoxide, nitrogen oxides, and sulfur dioxide, see § 60.1235.

§ 60.1295 What schedule must I follow for the stack testing?

(a) Conduct initial stack tests for the pollutants listed in § 60.1285 within 60 days after your municipal waste combustion unit reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup.

(b) Conduct annual stack tests for these pollutants after the initial stack test. Conduct each annual stack test within 12 months after the previous stack test.

§ 60.1300 What test methods must I use to stack test?

(a) Follow table 5 of this subpart to establish the sampling location and to determine pollutant concentrations, number of traverse points, individual test methods, and other specific testing requirements for the different pollutants.

(b) Make sure that stack tests for all these pollutants consist of at least three test runs, as specified in § 60.8 (Performance Tests) of subpart A of this part. Use the average of the pollutant emission concentrations from the three test runs to determine compliance with the emission limits in table 1 of this subpart.

(c) Obtain an oxygen (or carbon dioxide) measurement at the same time as your pollutant measurements to determine diluent gas levels, as specified in § 60.1230.

(d) Use the equations in § 60.1460(a) to calculate emission levels at 7 percent oxygen (or an equivalent carbon dioxide basis), the percent reduction in potential hydrogen chloride emissions, and the reduction efficiency for mercury emissions. See the individual test methods in table 5 of this subpart for other required equations.

§ 60.1305 May I conduct stack testing less often?

(a) You may test less often if you own or operate a Class II municipal waste combustion unit and if all stack tests for a given pollutant over 3 consecutive years show you comply with the emission limit. In this case, you are not required to conduct a stack test for that pollutant for the next 2 years. However, you must conduct another stack test within 36 months of the anniversary date of the third consecutive stack test that shows you comply with the emission limit. Thereafter, you must perform stack tests every third year but no later than 36 months following the

previous stack tests. If a stack test shows noncompliance with an emission limit, you must conduct annual stack tests for that pollutant until all stack tests over a 3-year period show compliance.

(b) You can test less often if you own or operate a municipal waste combustion plant that meets two conditions. First, you have multiple municipal waste combustion units onsite that are subject to this subpart. Second, all these municipal waste combustion units have demonstrated levels of dioxin/furan emissions no more than 7 nanograms per dry standard cubic meter (total mass) for 2 consecutive years. In this case, you may choose to conduct annual stack tests on only one municipal waste combustion unit per year at your plant.

(1) Conduct the stack test no more than 12 months following a stack test on any municipal waste combustion unit subject to this subpart at your plant. Each year, test a different municipal waste combustion unit subject to this subpart and test all municipal waste combustion units subject to this subpart in a sequence that you determine. Once you determine a testing sequence, it must not be changed without approval by the Administrator.

(2) If each annual stack test shows levels of dioxin/furan emissions less than 7 nanograms per dry standard cubic meter (total mass), you may continue stack tests on only one municipal waste combustion unit subject to this subpart per year.

(3) If any annual stack test indicates levels of dioxin/furan emissions greater than 7 nanograms per dry standard cubic meter (total mass), conduct subsequent annual stack tests on all municipal waste combustion units subject to this subpart at your plant. You may return to testing one municipal waste combustion unit subject to this subpart per year if you can demonstrate dioxin/furan emission levels less than 7 nanograms per dry standard cubic meter (total mass) for all municipal waste combustion units at your plant subject to this subpart for 2 consecutive years.

§ 60.1310 May I deviate from the 12-month testing schedule if unforeseen circumstances arise?

You may not deviate from the 12-month testing schedules specified in §§ 60.1295(b) and 60.1305(b)(1) unless you apply to the Administrator for an alternative schedule, and the Administrator approves your request for alternative scheduling prior to the date on which you would otherwise have been required to conduct the next stack test.

Other Monitoring Requirements

§ 60.1315 Must I meet other requirements for continuous monitoring?

You must also monitor three operating parameters:

(a) Load level of each municipal waste combustion unit.

(b) Temperature of flue gases at the inlet of your particulate matter air pollution control device.

(c) Carbon feed rate if activated carbon is used to control dioxin/furan or mercury emissions.

§ 60.1320 How do I monitor the load of my municipal waste combustion unit?

(a) If your municipal waste combustion unit generates steam, you must install, calibrate, maintain, and operate a steam flowmeter or a feed water flowmeter and meet five requirements:

(1) Continuously measure and record the measurements of steam (or feed water) in kilograms per hour (or pounds per hour).

(2) Calculate your steam (or feed water) flow in 4-hour block averages.

(3) Calculate the steam (or feed water) flow rate using the method in ''American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991),'' section 4 (incorporated by reference in § 60.17 of subpart A of this part).

(4) Design, construct, install, calibrate, and use nozzles or orifices for flow rate measurements, using the recommendations in ''American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters,'' 6th Edition (1971), chapter 4 (incorporated by reference in § 60.17 of subpart A of this part).

(5) Before each dioxin/furan stack test, or at least once a year, calibrate all signal conversion elements associated with steam (or feed water) flow measurements according to the manufacturer instructions.

(b) If your municipal waste combustion unit does not generate steam, you must determine, to the satisfaction of the Administrator, one or more operating parameters that can be used to continuously estimate load level (for example, the feed rate of municipal solid waste or refuse-derived fuel). You must continuously monitor the selected parameters.

§ 60.1325 How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?

You must install, calibrate, maintain, and operate a device to continuously measure the temperature of the flue gas stream at the inlet of each particulate matter control device.

§ 60.1330 How do I monitor the injection rate of activated carbon?

If your municipal waste combustion unit uses activated carbon to control dioxin/furan or mercury emissions, you must meet three requirements:

(a) Select a carbon injection system operating parameter that can be used to calculate carbon feed rate (for example, screw feeder speed).

(b) During each dioxin/furan and mercury stack test, determine the average carbon feed rate in kilograms (or pounds) per hour. Also, determine the average operating parameter level that correlates to the carbon feed rate. Establish a relationship between the operating parameter and the carbon feed rate in order to calculate the carbon feed rate based on the operating parameter level.

(c) Continuously monitor the selected operating parameter during all periods when the municipal waste combustion unit is operating and combusting waste and calculate the 8-hour block average carbon feed rate in kilograms (or pounds) per hour, based on the selected operating parameter. When calculating the 8-hour block average, do two things:

(1) Exclude hours when the municipal waste combustion unit is not operating.

(2) Include hours when the municipal waste combustion unit is operating but the carbon feed system is not working correctly.

§ 60.1335 What is the minimum amount of monitoring data I must collect with my continuous parameter monitoring systems and is this requirement enforceable?

(a) Where continuous parameter monitoring systems are used, obtain 1-hour arithmetic averages for three parameters:

(1) Load level of the municipal waste combustion unit.

(2) Temperature of the flue gases at the inlet of your particulate matter control device.

(3) Carbon feed rate if activated carbon is used to control dioxin/furan or mercury emissions.

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average.

(c) Obtain valid 1-hour averages for, at a minimum, 75 percent of the operating hours per day and for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation

of this data collection requirement and you must notify the Administrator according to § 60.1410(e).

Recordkeeping

§ 60.1340 What records must I keep?

You must keep five types of records:

(a) Materials separation plan and siting analysis.

(b) Operator training and certification.

(c) Stack tests.

(d) Continuously monitored pollutants and parameters.

(e) Carbon feed rate.

§ 60.1345 Where must I keep my records and for how long?

(a) Keep all records onsite in paper copy or electronic format unless the Administrator approves another format.

(b) Keep all records on each municipal waste combustion unit for at least 5 years.

(c) Make all records available for submittal to the Administrator, or for onsite review by an inspector.

§ 60.1350 What records must I keep for the materials separation plan and siting analysis?

You must keep records of five items:

(a) The date of each record.

(b) The final materials separation plan.

(c) The siting analysis.

(d) A record of the location and date of the public meetings.

(e) Your responses to the public comments received during the public comment periods.

§ 60.1355 What records must I keep for operator training and certification?

You must keep records of six items:

(a) *Records of provisional certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are provisionally certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of the initial provisional certifications.

(3) Documentation showing current provisional certifications.

(b) *Records of full certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are fully certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of initial and renewal full certifications.

(3) Documentation showing current full certifications.

(c) *Records showing completion of the operator training course.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who have completed the EPA or State municipal waste combustion operator training course.

(2) Dates of completion of the operator training course.

(3) Documentation showing completion of the operator training course.

(d) *Records of reviews for plant-specific operating manuals.* Include three items:

(1) Names of persons who have reviewed the operating manual.

(2) Date of the initial review.

(3) Dates of subsequent annual reviews.

(e) *Records of when a certified operator is temporarily offsite.* Include two main items:

(1) If the certified chief facility operator and certified shift supervisor are offsite for more than 8 hours, but less than 2 weeks, and no other certified operator is onsite, record the dates that the certified chief facility operator and certified shift supervisor were offsite.

(2) When the certified chief facility operator and certified shift supervisor are offsite for more than 2 weeks and no other certified operator is onsite, keep records of four items:

(i) Your notice that all certified persons are offsite.

(ii) The conditions that cause these people to be offsite.

(iii) The corrective actions you are taking to ensure a certified chief facility operator or certified shift supervisor is onsite.

(iv) Copies of the written reports submitted every 4 weeks that summarize the actions taken to ensure that a certified chief facility operator or certified shift supervisor will be onsite.

(f) *Records of calendar dates.* Include the calendar date on each record.

§ 60.1360 What records must I keep for stack tests?

For stack tests required under § 60.1285, you must keep records of four items:

(a) The results of the stack tests for eight pollutants or parameters recorded in the appropriate units of measure specified in table 1 of this subpart:

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead.

(4) Mercury.

(5) Opacity.

(6) Particulate matter.

(7) Hydrogen chloride.

(8) Fugitive ash.

(b) Test reports including supporting calculations that document the results of all stack tests.

(c) The maximum demonstrated load of your municipal waste combustion units and maximum temperature at the inlet of your particulate matter control device during all stack tests for dioxin/furan emissions.

(d) The calendar date of each record.

§ 60.1365 What records must I keep for continuously monitored pollutants or parameters?

You must keep records of eight items:

(a) *Records of monitoring data.* Document six parameters measured using continuous monitoring systems:

(1) All 6-minute average levels of opacity.

(2) All 1-hour average concentrations of sulfur dioxide emissions.

(3) For Class I municipal waste combustion units only, all 1-hour average concentrations of nitrogen oxides emissions.

(4) All 1-hour average concentrations of carbon monoxide emissions.

(5) All 1-hour average load levels of your municipal waste combustion unit.

(6) All 1-hour average flue gas temperatures at the inlet of the particulate matter control device.

(b) *Records of average concentrations and percent reductions.* Document five parameters:

(1) All 24-hour daily block geometric average concentrations of sulfur dioxide emissions or average percent reductions of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, all 24-hour daily arithmetic average concentrations of nitrogen oxides emissions.

(3) All 4-hour block or 24-hour daily block arithmetic average concentrations of carbon monoxide emissions.

(4) All 4-hour block arithmetic average load levels of your municipal waste combustion unit.

(5) All 4-hour block arithmetic average flue gas temperatures at the inlet of the particulate matter control device.

(c) *Records of exceedances.* Document three items:

(1) Calendar dates whenever any of the five pollutant or parameter levels recorded in paragraph (b) or the opacity level recorded in paragraph (a)(1) of this section did not meet the emission limits or operating levels specified in this subpart.

(2) Reasons you exceeded the applicable emission limits or operating levels.

(3) Corrective actions you took, or are taking, to meet the emission limits or operating levels.

(d) *Records of minimum data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of data required under §§ 60.1260 and 60.1335. Record these dates for five types of pollutants and parameters:

(i) Sulfur dioxide emissions.

(ii) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(iii) Carbon monoxide emissions.

(iv) Load levels of your municipal waste combustion unit.

(v) Temperatures of the flue gases at the inlet of the particulate matter control device.

(2) Reasons you did not collect the minimum data.

(3) Corrective actions you took, or are taking, to obtain the required amount of data.

(e) *Records of exclusions.* Document each time you have excluded data from your calculation of averages for any of the following five pollutants or parameters and the reasons the data were excluded:

(1) Sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load levels of your municipal waste combustion unit.

(5) Temperatures of the flue gases at the inlet of the particulate matter control device.

(f) *Records of drift and accuracy.* Document the results of your daily drift tests and quarterly accuracy determinations according to procedure 1 of appendix F of this part. Keep these records for the sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide continuous emissions monitoring systems.

(g) *Records of the relationship between oxygen and carbon dioxide.* If you chose to monitor carbon dioxide instead of oxygen as a diluent gas, document the relationship between oxygen and carbon dioxide, as specified in § 60.1255.

(h) *Records of calendar dates.* Include the calendar date on each record.

§ 60.1370 What records must I keep for municipal waste combustion units that use activated carbon?

For municipal waste combustion units that use activated carbon to control dioxin/furan or mercury emissions, you must keep records of five items:

(a) *Records of average carbon feed rate.* Document five items:

(1) Average carbon feed rate (in kilograms or pounds per hour) during all stack tests for dioxin/furan and mercury emissions. Include supporting calculations in the records.

(2) For the operating parameter chosen to monitor carbon feed rate, average operating level during all stack tests for dioxin/furans and mercury emissions. Include supporting data that document the relationship between the operating parameter and the carbon feed rate.

(3) All 8-hour block average carbon feed rates in kilograms (pounds) per hour calculated from the monitored operating parameter.

(4) Total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include supporting documentation.

(5) Required quarterly usage of carbon for the municipal waste combustion plant, calculated using the appropriate equation in § 60.1460(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant. Include supporting calculations.

(b) *Records of low carbon feed rates.* Document three items:

(1) The calendar dates when the average carbon feed rate over an 8-hour block was less than the average carbon feed rates determined during the most recent stack test for dioxin/furan or mercury emissions (whichever has a higher feed rate).

(2) Reasons for the low carbon feed rates.

(3) Corrective actions you took or are taking to meet the 8-hour average carbon feed rate requirement.

(c) *Records of minimum carbon feed rate data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of carbon feed rate data required under § 60.1335.

(2) Reasons you did not collect the minimum data.

(3) Corrective actions you took or are taking to get the required amount of data.

(d) *Records of exclusions.* Document each time you have excluded data from your calculation of average carbon feed rates and the reasons the data were excluded.

(e) *Records of calendar dates.* Include the calendar date on each record.

Reporting

§ 60.1375 What reports must I submit before I submit my notice of construction?

(a) If you are required to submit an application for a construction permit under 40 CFR, part 51, subpart I, or part 52, you must submit five items by the date you submit your application.

(1) Your draft materials separation plan, as specified in § 60.1065.

(2) Your revised materials separation plan, as specified in § 60.1085(c).

(3) Your notice of the initial public meeting for your draft materials separation plan, as specified in § 60.1070(b).

(4) A transcript of the initial public meeting, as specified in § 60.1080(f).

(5) The document that summarizes your responses to the public comments you received during the initial public comment period, as specified in § 60.1085(a).

(b) If you are not required to submit an application for a construction permit under 40 CFR part 51, subpart I, or part 52, you must submit the items in paragraph (a) of this section with your notice of construction.

§ 60.1380 What must I include in my notice of construction?

(a) Include ten items:

(1) A statement of your intent to construct the municipal waste combustion unit.

(2) The planned initial startup date of your municipal waste combustion unit.

(3) The types of fuels you plan to combust in your municipal waste combustion unit.

(4) The capacity of your municipal waste combustion unit including supporting capacity calculations, as specified in § 60.1460(d) and (e).

(5) Your siting analysis, as specified in § 60.1125.

(6) Your final materials separation plan, as specified in § 60.1100(b).

(7) Your notice of the second public meeting (siting analysis meeting), as specified in § 60.1130(b).

(8) A transcript of the second public meeting, as specified in § 60.1140(d).

(9) A copy of the document that summarizes your responses to the public comments you received during the second public comment period, as specified in § 60.1145(a).

(10) Your final siting analysis, as specified in § 60.1145(c).

(b) Submit your notice of construction no later than 30 days after you commence construction, reconstruction,

or modification of your municipal waste combustion unit.

§ 60.1385 What reports must I submit after I submit my notice of construction and in what form?

(a) Submit an initial report and annual reports, plus semiannual reports for any emission or parameter level that does not meet the limits specified in this subpart.

(b) Submit all reports on paper, postmarked on or before the submittal dates in §§ 60.1395, 60.1405, and 60.1420. If the Administrator agrees, you may submit electronic reports.

(c) Keep a copy of all reports required by §§ 60.1400, 60.1410, and 60.1425 onsite for 5 years.

§ 60.1390 What are the appropriate units of measurement for reporting my data?

See tables 1 and 2 of this subpart for appropriate units of measurement.

§ 60.1395 When must I submit the initial report?

As specified in subpart A of this part, submit your initial report within 60 days after your municipal waste combustion unit reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup.

§ 60.1400 What must I include in my initial report?

You must include seven items:

(a) The emission levels measured on the date of the initial evaluation of your continuous emission monitoring systems for all of the following five pollutants or parameters as recorded in accordance with § 60.1365(b).

(1) The 24-hour daily geometric average concentration of sulfur dioxide emissions or the 24-hour daily geometric percent reduction of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, the 24-hour daily arithmetic average concentration of nitrogen oxides emissions.

(3) The 4-hour block or 24-hour daily arithmetic average concentration of carbon monoxide emissions.

(4) The 4-hour block arithmetic average load level of your municipal waste combustion unit.

(5) The 4-hour block arithmetic average flue gas temperature at the inlet of the particulate matter control device.

(b) The results of the initial stack tests for eight pollutants or parameters (use appropriate units as specified in table 2 of this subpart):

(1) Dioxins/furans.
(2) Cadmium.
(3) Lead.
(4) Mercury.
(5) Opacity.
(6) Particulate matter.
(7) Hydrogen chloride.
(8) Fugitive ash emissions.

(c) The test report that documents the initial stack tests including supporting calculations.

(d) The initial performance evaluation of your continuous emissions monitoring systems. Use the applicable performance specifications in appendix B of this part in conducting the evaluation.

(e) The maximum demonstrated load of your municipal waste combustion unit and the maximum demonstrated temperature of the flue gases at the inlet of the particulate matter control device. Use values established during your initial stack test for dioxin/furan emissions and include supporting calculations.

(f) If your municipal waste combustion unit uses activated carbon to control dioxin/furan or mercury emissions, the average carbon feed rates that you recorded during the initial stack tests for dioxin/furan and mercury emissions. Include supporting calculations as specified in § 60.1370(a)(1) and (2).

(g) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 60.1255.

§ 60.1405 When must I submit the annual report?

Submit the annual report no later than February 1 of each year that follows the calendar year in which you collected the data. If you have an operating permit for any unit under title V of the Clean Air Act, the permit may require you to submit semiannual reports. Parts 70 and 71 of this chapter contain program requirements for permits.

§ 60.1410 What must I include in my annual report?

Summarize data collected for all pollutants and parameters regulated under this subpart. Your summary must include twelve items:

(a) The results of the annual stack test, using appropriate units, for eight pollutants, as recorded under § 60.1360(a):

(1) Dioxins/furans.
(2) Cadmium.
(3) Lead.
(4) Mercury.
(5) Particulate matter.
(6) Opacity.
(7) Hydrogen chloride.
(8) Fugitive ash.

(b) A list of the highest average levels recorded, in the appropriate units. List these values for five pollutants or parameters:

(1) Sulfur dioxide emissions.
(2) For Class 1 municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device (4-hour block average).

(c) The highest 6-minute opacity level measured. Base this value on all 6-minute average opacity levels recorded by your continuous opacity monitoring system (§ 60.1365(a)(1)).

(d) For municipal waste combustion units that use activated carbon for controlling dioxin/furan or mercury emissions, include four records:

(1) The average carbon feed rates recorded during the most recent dioxin/furan and mercury stack tests.

(2) The lowest 8-hour block average carbon feed rate recorded during the year.

(3) The total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant.

(4) The required quarterly carbon usage of your municipal waste combustion plant, calculated using the appropriate equation in § 60.1460(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant.

(e) The total number of days that you did not obtain the minimum number of hours of data for six pollutants or parameters. Include the reasons you did not obtain the data and corrective actions that you have taken to obtain the data in the future. Include data on:

(1) Sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.
(6) Carbon feed rate.

(f) The number of hours you have excluded data from the calculation of average levels (include the reasons for excluding it). Include data for six pollutants or parameters:

(1) Sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.
(6) Carbon feed rate.
(g) A notice of your intent to begin a reduced stack testing schedule for dioxin/furan emissions during the following calendar year, if you are eligible for alternative scheduling (§ 60.1305 (a) or (b)).
(h) A notice of your intent to begin a reduced stack testing schedule for other pollutants during the following calendar year, if you are eligible for alternative scheduling (§ 60.1305(a)).
(i) A summary of any emission or parameter level that did not meet the limits specified in this subpart.
(j) A summary of the data in paragraphs (a) through (d) of this section from the year preceding the reporting year. This summary gives the Administrator a summary of the performance of the municipal waste combustion unit over a 2-year period.
(k) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 60.1255.
(l) Documentation of periods when all certified chief facility operators and certified shift supervisors are offsite for more than 8 hours.

§ 60.1415 What must I do if I am out of compliance with these standards?

You must submit a semiannual report on any recorded emission or parameter level that does not meet the requirements specified in this subpart.

§ 60.1420 If a semiannual report is required, when must I submit it?

(a) For data collected during the first half of a calendar year, submit your semiannual report by August 1 of that year.
(b) For data you collected during the second half of the calendar year, submit your semiannual report by February 1 of the following year.

§ 60.1425 What must I include in the semiannual out-of-compliance reports?

You must include three items in the semiannual report:
(a) For any of the following six pollutants or parameters that exceeded the limits specified in this subpart, include the calendar date they exceeded the limits, the averaged and recorded data for that date, the reasons for exceeding the limits, and your corrective actions:
(1) Concentration or percent reduction of sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, concentration of nitrogen oxides emissions.
(3) Concentration of carbon monoxide emissions.
(4) Load level of your municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of your particulate matter air pollution control device.
(6) Average 6-minute opacity level.
(b) If the results of your annual stack tests (as recorded in § 60.1360(a)) show emissions above the limits specified in table 1 of this subpart for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, include a copy of the test report that documents the emission levels and your corrective actions.
(c) For municipal waste combustion units that apply activated carbon to control dioxin/furan or mercury emissions, include two items:
(1) Documentation of all dates when the 8-hour block average carbon feed rate (calculated from the carbon injection system operating parameter) is less than the highest carbon feed rate established during the most recent mercury and dioxin/furan stack test (as specified in § 60.1370(a)(1)). Include four items:
(i) Eight-hour average carbon feed rate.
(ii) Reasons for these occurrences of low carbon feed rates.
(iii) The corrective actions you have taken to meet the carbon feed rate requirement.
(iv) The calendar date.
(2) Documentation of each quarter when total carbon purchased and delivered to the municipal waste combustion plant is less than the total required quarterly usage of carbon. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include five items:
(i) Amount of carbon purchased and delivered to the plant.
(ii) Required quarterly usage of carbon.
(iii) Reasons for not meeting the required quarterly usage of carbon.
(iv) The corrective actions you have taken to meet the required quarterly usage of carbon.
(v) The calendar date.

§ 60.1430 Can reporting dates be changed?

(a) If the Administrator agrees, you may change the semiannual or annual reporting dates.
(b) See § 60.19(c) in subpart A of this part for procedures to seek approval to change your reporting date.

Air Curtain Incinerators That Burn 100 Percent Yard Waste

§ 60.1435 What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

§ 60.1440 What is yard waste?

Yard waste is grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:
(a) Construction, renovation, and demolition wastes that are exempt from the definition of ''municipal solid waste'' in § 60.1465 of this subpart.
(b) Clean wood that is exempt from the definition of ''municipal solid waste'' in § 60.1465 of this subpart.

§ 60.1445 What are the emission limits for air curtain incinerators that burn 100 percent yard waste?

(a) Within 60 days after your air curtain incinerator reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup, you must meet two limits:
(1) The opacity limit is 10 percent (6-minute average) for air curtain incinerators that can combust at least 35 tons per day of municipal solid waste and no more than 250 tons per day of municipal solid waste.
(2) The opacity limit is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.
(b) Except during malfunctions, the requirements of this subpart apply at all times. Each malfunction must not exceed 3 hours.

§ 60.1450 How must I monitor opacity for air curtain incinerators that burn 100 percent yard waste?

(a) Use EPA Reference Method 9 to determine compliance with the opacity limit.

(b) Conduct an initial test for opacity as specified in § 60.8 of subpart A of this part.

(c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

§ 60.1455 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent yard waste?

(a) Provide a notice of construction that includes four items:

(1) Your intent to construct the air curtain incinerator.

(2) Your planned initial startup date.

(3) Types of fuels you plan to combust in your air curtain incinerator.

(4) The capacity of your incinerator, including supporting capacity calculations, as specified in § 60.1460 (d) and (e).

(b) Keep records of results of all opacity tests onsite in either paper copy or electronic format unless the Administrator approves another format.

(c) Keep all records for each incinerator for at least 5 years.

(d) Make all records available for submittal to the Administrator or for onsite review by an inspector.

(e) Submit the results (each 6-minute average) of the opacity tests by February 1 of the year following the year of the opacity emission test.

(f) Submit reports as a paper copy on or before the applicable submittal date. If the Administrator agrees, you may submit reports on electronic media.

(g) If the Administrator agrees, you may change the annual reporting dates (see § 60.19(c) in subpart A of this part).

(h) Keep a copy of all reports onsite for a period of 5 years.

Equations

§ 60.1460 What equations must I use?

(a) *Concentration correction to 7 percent oxygen.* Correct any pollutant concentration to 7 percent oxygen using the following equation:

$C_{7\neq} C_{unc} *(13.9) * (1/ (20.9 - CO_2))$

Where:

$C_{7\neq}$ = concentration corrected to 7 percent oxygen.

C_{unc} = uncorrected pollutant concentration.

CO_2 = concentration of oxygen (%).

(b) *Percent reduction in potential mercury emissions.* Calculate the percent reduction in potential mercury emissions ($\%P_{Hg}$) using the following equation:

$\%P_{Hg} = (E_i - E_o) * (100/E_i)$

Where:

$\%P_{Hg}$ = percent reduction of potential mercury emissions

E_i = mercury emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

E_o = mercury emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(c) *Percent reduction in potential hydrogen chloride emissions.* Calculate the percent reduction in potential hydrogen chloride emissions ($\%P_{HC1}$) using the following equation:

$\%P_{HC1} = (E_i - E_o) * (100/E_i)$

Where:

$\%P_{HC1}$ = percent reduction of the potential hydrogen chloride emissions

E_i = hydrogen chloride emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

E_o = hydrogen chloride emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(d) *Capacity of a municipal waste combustion unit.* For municipal waste combustion units that can operate continuously for 24-hour periods, calculate the municipal waste combustion units capacity based on 24 hours of operation at the maximum charge rate. To determine the maximum charge rate, use one of two methods:

(1) For municipal waste combustion units with a design based on heat input capacity, calculate the maximum charging rate based on this maximum heat input capacity and one of two heating values:

(i) If your municipal waste combustion unit combusts refuse-derived fuel, use a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound).

(ii) If your municipal waste combustion unit combusts municipal solid waste, use a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound).

(2) For municipal waste combustion units with a design not based on heat input capacity, use the maximum designed charging rate.

(e) *Capacity of a batch municipal waste combustion unit.* Calculate the capacity of a batch municipal waste combustion unit as the maximum design amount of municipal solid waste they can charge per batch multiplied by the maximum number of batches they can process in 24 hours. Calculate this maximum number of batches by dividing 24 by the number of hours needed to process one batch. Retain fractional batches in the calculation. For example, if one batch requires 16 hours, the municipal waste combustion unit can combust 24/16, or 1.5 batches, in 24 hours.

(f) *Quarterly carbon usage.* If you use activated carbon to comply with the dioxin/furan or mercury limits, calculate the required quarterly usage of carbon using the appropriate equation for plant basis or unit basis:

(1) Plant basis.

$$C = \sum_{i=i}^{n} f_i * h_i$$

Where:

C = required quarterly carbon usage for the plant in kilograms (or pounds).

f_i = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. This is the average carbon feed rate during the most recent mercury or dioxin/furan stack tests (whichever has a higher feed rate).

h_i = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

n = number of municipal waste combustion units, i, located at your plant.

(2) Unit basis.

$C = f * h$

Where:

C = required quarterly carbon usage for the unit in kilograms (or pounds).

f = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. This is the average carbon feed rate during the most recent mercury or dioxin/furan stack tests (whichever has a higher feed rate).

h = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

Definitions

§ 60.1465 What definitions must I know?

Terms used but not defined in this section are defined in the Clean Air Act and in subparts A and B of this part.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or the Administrator of a State Air Pollution Control Agency.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

Batch municipal waste combustion unit means a municipal waste combustion unit designed so it cannot combust municipal solid waste continuously 24 hours per day because the design does not allow waste to be fed to the unit or ash to be removed during combustion.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 (366 in leap years) consecutive days starting on January 1 and ending on December 31.

Chief facility operator means the person in direct charge and control of the operation of a municipal waste combustion unit. This person is responsible for daily onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit.

Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant capacity more than 250 tons per day of municipal solid waste. See the definition of ''municipal waste combustion plant capacity'' for specification of which units at a plant site are included in the aggregate capacity calculation.

Class II units mean small municipal waste combustion units subject to this subpart at municipal waste combustion plants with an aggregate plant capacity no more than 250 tons per day of municipal solid waste. See the definition of ''municipal waste combustion plant capacity'' for specification of which units at a plant site are included in the aggregate capacity calculation.

Clean wood means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include two items:

(1) Yard waste, which is defined elsewhere in this section.

(2) Construction, renovation, or demolition wastes (for example, railroad ties and telephone poles) that are exempt from the definition of municipal solid waste in this section.

Cofired combustion unit means a unit that combusts municipal solid waste with nonmunicipal solid waste fuel (for example, coal, industrial process waste). To be considered a cofired combustion unit, the unit must be subject to a federally enforceable permit that limits it to combusting a fuel feed stream which is 30 percent or less (by weight) municipal solid waste as measured each calendar quarter.

Continuous burning means the continuous, semicontinuous, or batch feeding of municipal solid waste to dispose of the waste, produce energy, or provide heat to the combustion system in preparation for waste disposal or energy production. Continuous burning does not mean the use of municipal solid waste solely to thermally protect the grate or hearth during the startup period when municipal solid waste is not fed to the grate or hearth.

Continuous emission monitoring system means a monitoring system that continuously measures the emissions of a pollutant from a municipal waste combustion unit.

Dioxins/furans mean tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Eight-hour block average means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of three 8-hour periods of time:

(1) 12:00 midnight to 8:00 a.m.

(2) 8:00 a.m. to 4:00 p.m.

(3) 4:00 p.m. to 12:00 midnight.

Federally enforceable means all limits and conditions the Administrator can enforce (including the requirements of 40 CFR parts 60, 61, and 63), requirements in a State's implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

First calendar half means the period that starts on January 1 and ends on June 30 in any year.

Fluidized bed combustion unit means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

Four-hour block average or *4-hour block average* means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of six 4-hour periods:

(1) 12:00 midnight to 4 a.m.

(2) 4 a.m. to 8 a.m.

(3) 8 a.m. to 12:00 noon.

(4) 12:00 noon to 4 p.m.

(5) 4 p.m. to 8 p.m.

(6) 8 p.m. to 12:00 midnight.

Mass burn refractory municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, this includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

Mass burn rotary waterwall municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

Mass burn waterwall municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

Materials separation plan means a plan that identifies a goal and an approach for separating certain components of municipal solid waste for a given service area in order to make the separated materials available for recycling. A materials separation plan may include three items:

(1) Elements such as dropoff facilities, buy-back or deposit-return incentives, curbside pickup programs, or centralized mechanical separation systems.

(2) Different goals or approaches for different subareas in the service area.

(3) No materials separation activities for certain subareas or, if warranted, the entire service area.

Maximum demonstrated load of a municipal waste combustion unit means the highest 4-hour block arithmetic average municipal waste combustion unit load achieved during 4 consecutive hours in the course of the most recent dioxin/furan stack test that demonstrates compliance with the applicable emission limit for dioxins/furans specified in this subpart.

Maximum demonstrated temperature of the particulate matter control device means the highest 4-hour block arithmetic average flue gas temperature measured at the inlet of the particulate matter control device during 4 consecutive hours in the course of the most recent stack test for dioxin/furan emissions that demonstrates compliance with the limits specified in this subpart.

Mixed fuel-fired (pulverized coal/refuse-derived fuel) combustion unit means a combustion unit that combusts coal and refuse-derived fuel simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is combusted in suspension. This includes both conventional pulverized coal and micropulverized coal.

Modification or *modified municipal waste combustion unit* means a municipal waste combustion unit you have changed later than 6 months after

promulgation of this subpart and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the unit (not including the cost of land) updated to current costs.

(2) Any physical change in the municipal waste combustion unit or change in the method of operating it that increases the emission level of any air pollutant for which standards have been established under section 129 or section 111 of the Clean Air Act. Increases in the emission level of any air pollutant are determined when the municipal waste combustion unit operates at 100 percent of its physical load capability and are measured downstream of all air pollution control devices. Load restrictions based on permits or other nonphysical operational restrictions cannot be considered in this determination.

Modular excess-air municipal waste combustion unit means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

Modular starved-air municipal waste combustion unit means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

Municipal solid waste or *municipal-type solid waste* means household, commercial/retail, or institutional waste. Household waste includes material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, by hospitals (nonmedical), by nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste and refuse-derived fuel. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

Municipal waste combustion plant means one or more municipal waste combustion units at the same location as specified under ''Applicability'' (§ 60.1015(a) and (b)).

Municipal waste combustion plant capacity means the aggregate municipal waste combustion unit capacity at a plant for all municipal waste combustion units at the plant that are subject to subparts Ea or Eb of this part, or this subpart.

Municipal waste combustion unit means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define these municipal waste combustion units:

(1) Municipal waste combustion units do not include pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under ''Applicability'' (§ 60.1020(h) and (i)). Municipal waste combustion units also do not include cement kilns that combust municipal solid waste as specified under ''Applicability'' (§ 60.1020(j)). They also do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(2) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(i) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(ii) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(iii) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

Particulate matter means total particulate matter emitted from municipal waste combustion units as measured by EPA Reference Method 5 (§ 60.1300).

Plastics or rubber recycling unit means an integrated processing unit for which plastics, rubber, or rubber tires are the only feed materials (incidental contaminants may be in the feed materials). These materials are processed and marketed to become input feed stock for chemical plants or petroleum refineries. The following three criteria further define a plastics or rubber recycling unit:

(1) Each calendar quarter, the combined weight of the feed stock that a plastics or rubber recycling unit produces must be more than 70 percent of the combined weight of the plastics, rubber, and rubber tires that recycling unit processes.

(2) The plastics, rubber, or rubber tires fed to the recycling unit may originate from separating or diverting plastics, rubber, or rubber tires from municipal or industrial solid waste. These feed materials may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards.

(3) The plastics, rubber, and rubber tires fed to the recycling unit may contain incidental contaminants (for example, paper labels on plastic bottles or metal rings on plastic bottle caps).

Potential hydrogen chloride emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

Potential mercury emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without controls for mercury emissions.

Potential sulfur dioxide emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

Pyrolysis/combustion unit means a unit that produces gases, liquids, or solids by heating municipal solid waste. The gases, liquids, or solids produced are combusted and the emissions vented to the atmosphere.

Reconstruction means rebuilding a municipal waste combustion unit and meeting two criteria:

(1) The reconstruction begins 6 months or more after [publication date of final rule].

(2) The cumulative cost of the construction over the life of the unit exceeds 50 percent of the original cost of building and installing the municipal waste combustion unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the municipal waste combustion unit used to calculate these costs, see the definition of municipal waste combustion unit.

Refractory unit or *refractory wall furnace* means a municipal waste combustion unit that has no energy recovery (such as through a waterwall) in the furnace of the municipal waste combustion unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Same location means the same or contiguous properties under common ownership or control, including those separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof. Entities may include a municipality, other governmental unit, or any quasi-governmental authority (for example, a public utility district or regional authority for waste disposal).

Second calendar half means the period that starts on July 1 and ends on December 31 in any year.

Shift supervisor means the person who is in direct charge and control of operating a municipal waste combustion unit and who is responsible for onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit during an assigned shift.

Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

Standard conditions when referring to units of measure mean a temperature of 20°C and a pressure of 101.3 kilopascals.

Startup period means the period when a municipal waste combustion unit begins the continuous combustion of municipal solid waste. It does not include any warmup period during which the municipal waste combustion unit combusts fossil fuel or other solid waste fuel but receives no municipal solid waste.

Stoker (refuse-derived fuel) combustion unit means a steam generating unit that combusts refuse-derived fuel in a semisuspension combusting mode, using air-fed distributors.

Total mass dioxins/furans or *total mass* means the total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans as determined using EPA Reference Method 23 and the procedures specified in § 60.1300.

Twenty-four hour daily average or *24-hour daily average* means either the arithmetic mean or geometric mean (as specified) of all hourly emission concentrations when the municipal waste combustion unit operates and combusts municipal solid waste measured during the 24 hours between 12:00 midnight and the following midnight.

Untreated lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Waterwall furnace means a municipal waste combustion unit that has energy (heat) recovery in the furnace (for example, radiant heat transfer section) of the combustion unit.

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(1) Construction, renovation, and demolition wastes that are exempt from the definition of ''municipal solid waste'' in this section.

(2) Clean wood that is exempt from the definition of ''municipal solid waste'' in this section.

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Table 1 of Subpart AAAA — Emission Limits For New Municipal Waste Combustion Units

For these pollutants	You must meet these emission limits[a]	Using these averaging times	And determine compliance by these methods
Organics			
Dioxins/furans (total mass basis)	13 nanograms per dry standard cubic meter	3-run average (minimum run duration is 4 hours)	Stack test
Metals			
Cadmium	0.020 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Lead	0.20 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Mercury	0.080 milligrams per dry standard cubic meter -or- 85 percent reduction of potential mercury emissions	3-run average (run duration specified in test method)	Stack test
Opacity	10 percent	Thirty 6-minute averages.	Stack test
Particulate matter	24 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Acid Gases			
Hydrogen chloride	25 parts per million by dry volume -or- 95 percent reduction of potential hydrogen chloride emissions	3-run average (minimum run duration is 1 hour)	Stack test

[a]All emission limits measured at 7 percent oxygen.

Table 1 of Subpart AAAA — Emission Limits For New Municipal Waste Combustion Units (Continued)

For these pollutants	You must meet these emission limits[a]	Using these averaging times	And determine compliance by these methods
Acid Gases (Continued)			
Nitrogen oxides (Class I units)	150 (180 for first year of operation) parts per million by dry volume	24-hour daily block arithmetic average concentration	Continuous emission monitoring system
Nitrogen oxides (Class II units)	Not applicable	Not applicable	Not applicable
Sulfur dioxide	30 parts per million by dry volume -or- 80 percent reduction of potential sulfur dioxide emissions	24-hour daily block geometric average concentration - or - percent reduction	Continuous emission monitoring system
Other			
Fugitive ash	Visible emissions for no more than 5 percent of hourly observation period	Three 1-hour observation periods	Visible emission test

[a]All emission limits are measured at 7 percent oxygen.

Table 2 of Subpart AAAA — Carbon Monoxide Emission Limits For New Municipal Waste Combustion Units

For these municipal waste combustion units	You must meet these carbon monoxide limits[a]	Using these averaging times[b]
Fluidized-bed	100 parts per million by dry volume	4-hour
Mass burn rotary refractory	100 parts per million by dry volume	4-hour
Mass burn rotary waterwall	100 parts per million by dry volume	24-hour
Mass burn waterwall and refractory	100 parts per million by dry volume	4-hour
Mixed fuel-fired (pulverized coal/refuse-derived fuel)	150 parts per million by dry volume	4-hour
Modular starved-air and excess air	50 parts per million by dry volume	4-hour
Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel)	150 parts per million by dry volume	24-hour daily
Stoker, refuse-derived fuel	150 parts per million by dry volume	24-hour daily

[a] All limits are measured at 7 percent oxygen. Compliance is determined by continuous emission monitoring systems.

[b] All averages are block averages. See §60.1465 for definitions.

Table 3 of Subpart AAAA — Requirements For Validating Continuous Emission Monitoring Systems (CEMS)

For these continuous monitoring systems	Use these methods to validate pollutant concentration levels	Use these methods to measure oxygen (or carbon dioxide)
Nitrogen oxides (Class 1 units only)	Method 7, 7A, 7B, 7C, 7D, or 7E	Method 3 or 3A
Sulfur dioxide	Method 6 or 6C	Method 3 or 3A
Carbon monoxide	Method 10, 10A, or 10B	Method 3 or 3A

Table 4 of Subpart AAAA — Requirements For Continuous Emission Monitoring Systems (CEMS)

For these pollutants	Use these span values for your CEMS	Use these performance specifications for your CEMS (from appendix B)	If needed to meet minimum data requirements, use these alternate methods to collect data
Opacity	100 percent opacity	P.S. 1	Method 9
Nitrogen oxides (Class I units only)	**Control device outlet:** 125 percent of the maximum expected hourly potential nitrogen oxides emissions of the municipal waste combustion unit	P.S. 2	Method 19
Sulfur dioxide	**Inlet to control device:** 125 percent of the maximum expected sulfur dioxide emissions of the municipal waste combustion unit **Control device outlet:** 50 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit	P.S. 2	Method 19
Carbon monoxide	125 percent of the maximum expected hourly potential carbon monoxide emissions of the municipal waste combustion unit	P.S. 4A	Method 10 with alternative interference trap
Oxygen or carbon dioxide	25 percent oxygen or 25 percent carbon dioxide	P.S. 3	Method 3A or 3B

Table 5 of Subpart AAAA — Requirements For Stack Tests

To measure these pollutants	Use these methods to determine the sampling location	Use these methods to measure pollutant concentration	Also note the following additional information
Organics			
Dioxins/furans	Method 1	Method 23[a]	The minimum sampling time must be 4 hours per test run while the municipal waste combustion unit is operating at full load.
Metals			
Cadmium	Method 1	Method 29[a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Lead	Method 1	Method 29[a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Mercury	Method 1	Method 29[a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Opacity	Not applicable	Method 9	Use Method 9 to determine compliance with opacity limit. 3-hour observation period (thirty 6-minute averages).
Particulate matter	Method 1	Method 5[a]	The minimum sample volume must be 1.7 cubic meters. The probe and filter holder heating systems in the sample train must be set to provide a gas temperature no greater than 160 $\pm$14°C.
Acid Gases [b]			
Hydrogen chloride	Not applicable	Method 26 [a]	Test runs must be at least 1 hour long.

[a]Must simultaneously measure oxygen (or carbon dioxide) using Method 3 or 3A.

[b]Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for Appendix F quality assurance requirements.

Table 5 of Subpart AAAA — Requirements For Stack Tests (Continued)

To measure these pollutants	Use these methods to determine the sampling location	Use these methods to measure pollutant concentration	Also note the following additional information
Other [b]			
Fugitive ash	Not applicable	Method 22 (visible emissions)	The three 1-hour observation period must include periods when the facility transfers fugitive ash from the municipal waste combustion unit to the area where the fugitive ash is stored or loaded into containers or trucks.

[a]Must simultaneously measure oxygen (or carbon dioxide) using method 3 or 3A.
[b]Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for Appendix F quality assurance requirements.

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Federal Register

Monday
August 30, 1999

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; Grant Applications Under Part D, Subpart 2 of the Individuals With Disabilities Education Act Amendments of 1997; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Grant Applications under Part D, Subpart 2 of the Individuals with Disabilities Education Act Amendments of 1997

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2000.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for FY 2000 competitions under five programs authorized by the Individuals with Disabilities Education Act (IDEA), as amended. The five programs are: (1) Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities (seven priorities); (2) Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities (four priorities); (3) Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (two priorities); (4) Special Education—Technology and Media Services for Individuals with Disabilities (five priorities); and (5) Special Education—Training and Information for Parents of Children with Disabilities (one priority).

This notice supports the National Education Goals by helping to improve results for children with disabilities.

Waiver of Rulemaking

It is generally the practice of the Secretary to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

General Requirements

(a) Projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see section 606 of IDEA);

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA);

(c) Projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, D.C. during each year of the project;

(d) In a single application, an applicant must address only one absolute priority in this notice; and (e)

Part III of each application submitted under a priority in this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit Part III to the equivalent of no more than the number of pages listed in the ''Page Limits'' section under the applicable priority in this notice. An applicant must use the following standards: (1) A ''page'' is 8½″ × 11″ (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Note: The Department of Education is not bound by any estimates in this notice.

Information collection resulting from this notice has been submitted to OMB for review under the Paperwork Reduction Act and has been approved under control number 1820–0028, expiration date July 31, 2000.

Research and Innovation To Improve Services and Results for Children With Disabilities

Purpose of Program

To produce, and advance the use of, knowledge to: (1) Improve services provided under IDEA, including the practices of professionals and others involved in providing those services to children with disabilities; and (2) improve educational and early intervention results for infants, toddlers, and children with disabilities.

Eligible Applicants

State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and; (b) The selection criteria for the priorities under this program are drawn from the EDGAR general selection criteria menu. The specific selection criteria for each priority are included in the funding application packet for the applicable competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

Under 34 CFR 75.105(c)(3), we consider only applications that meet one of the following priorities:

Absolute Priority 1—Student—Initiated Research Projects (84.324B)

This priority provides support for short-term (up to 12 months) postsecondary student-initiated research projects focusing on special education and related services for children with disabilities and early intervention services for infants and toddlers, consistent with the purposes of the program, as described in Section 672 of the Act.

Projects must—

(a) Develop research skills in postsecondary students; and (b) Include a principal investigator who serves as a mentor to the student researcher while the project is carried out by the student.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded

up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 12 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $20,000 for the entire project period. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 25 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 2—Field-Initiated Research Projects (84.324C)

This priority provides support for a wide range of field-initiated research projects that support innovation, development, exchange, and use of advancements in knowledge and practice as described in section 672 of the Act including the improvement of early intervention, instruction, and learning for infants, toddlers, and children with disabilities.

Projects must—

(a) Prepare their procedures, findings, and conclusions in a manner that informs other interested researchers and is useful for advancing professional practice or improving programs and services to infants, toddlers, and children with disabilities and their families; and

(b) Disseminate project procedures, findings, and conclusions to appropriate research institutes and technical assistance providers.

Invitational Priorities:

Within absolute priority 2 for FY 2000, we are particularly interested in applications that meet one or more of the following invitational priorities.

Under 34 CFR 75.105(c)(1) we do not give to an application that meets one or more of these invitational priorities a competitive or absolute preference over other applications.

(a) Projects to address the specific problems of over-identification and under-identification of children with disabilities. (See section 672(a)(3) of the Act).

(b) Projects to develop and implement effective strategies for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services. (See section 672(a)(4) of the Act).

(c) Projects studying and promoting improved alignment and compatibility of general and special education reforms concerned with curriculum and instruction, evaluation and accountability, and administrative procedures. (See section 672(b)(2)(D) of the Act).

(d) Projects that advance knowledge about the coordination of education with health and social services. (See section 672(b)(2)(G) of the Act).

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: The majority of projects will be funded for up to 36 months. Only in exceptional circumstances—such as research questions that require repeated measurement within a longitudinal design—will projects be funded for more than 36 months, up to a maximum of 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $180,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 3—Initial Career Awards (84.324N)

Background:

There is a need to enable individuals in the initial phases of their careers to initiate and develop promising lines of research that would improve early intervention services for infants and toddlers, and special education and related services for children with disabilities. Support for research activities among individuals in the initial phases of their careers is intended to develop the capacity of the special education research community. This priority would address the additional need to provide support for a broad range of field-initiated research projects—focusing on the special education and related services for children with disabilities and early intervention for infants and toddlers—consistent with the purpose of the program as described in section 672 of the Act.

Priority: The Secretary establishes an absolute priority for the purpose of awarding grants to eligible applicants for the support of individuals in the initial phases of their careers to initiate and develop promising lines of research consistent with the purposes of the program. For purposes of this priority, the initial phase of an individual's career is considered to be the first three years after completing a doctoral program and graduating (e.g., for fiscal year 2000 awards, projects may support individuals who completed a doctoral program and graduated no earlier than the 1996–1997 academic year).

Projects must—

(a) Pursue a line of inquiry that reflects a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish directions for designing future studies extending beyond the support of this award. The project is not intended to represent all inquiry related to the particular theory or conceptual framework; rather, it is expected to initiate a new line or advance an existing one;

(b) In addition to involving individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project, as required by the Act, include, in design and conduct, sustained involvement with one or more nationally recognized experts having substantive or methodological knowledge and expertise relevant to the proposed research. The experts do not have to be at the same institution or

agency at which the project is located, but the interaction with the project must be sufficient to develop the capacity of the initial career researcher to effectively pursue the research into mid-career activities. At least 50 percent of the researcher's time must be devoted to the project;

(c) Prepare their procedures, findings, and conclusions in a manner that informs other interested researchers and is useful for advancing professional practice or improving programs and services to infants, toddlers, and children with disabilities and their families; and

(d) Disseminate project procedures, findings, and conclusions to appropriate research institutes and technical assistance providers.

Invitational Priority:

Within absolute priority 3 for FY 2000, we are particularly interested in applications that meets the following invitational priority.

Projects that include in the design and conduct of the research project, a practicing teacher or clinician, in addition to the required involvement of nationally recognized experts.

Under 34 CFR 75.105(c)(1) we do not give to an application that meets the priority a competitive or absolute preference over other applications.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $75,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 30 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 4—Model Demonstration Projects for Children with Disabilities (84.324M)

This priority supports model demonstration projects that develop, implement, evaluate, and disseminate new or improved approaches for providing early intervention, special education, and related services to infants, toddlers, and children with disabilities, and students with disabilities who are pursuing post-school employment, postsecondary education or independent living goals. Projects supported under this priority are expected to be major contributors of models or components of models for service providers and for outreach projects funded under the Individuals with Disabilities Education Act.

Requirements for All Demonstration Projects:

A model demonstration project must—

(a) Develop and implement the model with specific components or strategies that are based on theory, research, or evaluation data;

(b) Evaluate the model by using multiple measures of results to determine the effectiveness of the model and its components or strategies; and

(c) Produce detailed procedures and materials that would enable others to replicate the model.

Federal financial participation for a project funded under this priority will not exceed 90 percent of the total annual costs of development, operation, and evaluation of the project (see section 661(f)(2)(A) of IDEA).

In addition to the annual two-day Project Directors' meeting in Washington, DC mentioned in the ''General Requirements'' section of this notice, projects must budget for another meeting in Washington, DC to collaborate with the Federal project officer and the other projects funded under this priority, to share information and discuss model development, evaluation, and project implementation issues.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 48 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $150,000 (exclusive of any matching funds) for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limit: The maximum page limit for this priority is 40 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 5—Outreach Projects for Children with Disabilities (84.324R)

This priority supports projects that will assist educational and other agencies in replicating proven models, components of models, and other exemplary practices that improve services for infants, toddlers, children with disabilities, and students with disabilities who are pursuing post-school employment, postsecondary education or independent living goals.

For the purposes of this priority, a ''proven model'' is a comprehensive description of a theory or system that, when applied, has been shown to be effective. ''Exemplary practices'' are effective strategies and methods used to deliver education, related or early intervention services. The models, components of models, or exemplary practices selected for outreach may include these developed for pre-service and in-service personnel preparation, and do not need to have been developed through projects funded under IDEA, or by the applicant.

Important elements of an outreach project include but are not limited to:

(a) Providing supporting data or other documentation in the application regarding the effectiveness of the model, components of a model, or exemplary practices selected for outreach;

(b) Selecting implementation sites in multiple regions within one State or multiple States and describing the criteria for their selection;

(c) Describing the expected costs, needed personnel, staff training, equipment, and sequence of implementation activities associated with the replication efforts, including a description of any modifications to the model or practice made by the sites;

(d) Including public awareness, product development and dissemination, training, and technical assistance activities as part of the implementation of the project; and

(e) Coordinating dissemination and replication activities conducted as part of outreach with dissemination projects, technical assistance providers, consumer and advocacy organizations, State and local educational agencies, and the lead agencies for Part C of IDEA, as appropriate.

Projects must prepare products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities. (See section 661(f)(2)(B) of IDEA).

Federal financial participation for a project funded under this priority will not exceed 90 percent of the total annual costs of development, operation, and evaluation of the project (see section 661(f)(2)(A) of IDEA).

In addition to the annual two-day Project Directors' meeting in Washington, DC mentioned in the General Requirements section of this notice, projects must budget annually for another meeting in Washington, DC to collaborate with the Federal project officer and the other projects funded under this priority, to share information and discuss project implementation issues.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $150,000 (exclusive of any matching funds) for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 40 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 6—Research Institute To Enhance the Role of Special Education and Children With Disabilities in Education Policy Reform (84.324P)

Education reforms are often leveraged through enhanced accountability for students outcomes, school improvement, and personnel performance. Findings from the Center for Policy Research on the Impact of General and Special Education Reform indicate that inclusion of students with disabilities in these general accountability efforts is one of the major forces shaping reform of special education. IDEA reflects an increased emphasis on including students with disabilities in accountability systems by requiring their participation in general State and district-wide assessments. IDEA also requires States to establish indicators to use in assessing progress toward achieving goals that address the performance of children with disabilities on assessments, drop-out rates, and graduation rates.

Priority:

The Secretary establishes an absolute priority for a research institute to study the role of special education and children with disabilities in educational policy reform, specifically initiatives designed to improve student performance through increased accountability. A project funded under this priority must—

(a) Identify and review critical gaps in the current knowledge in the following areas:

(1) How broad education policy reforms that incorporate high-stakes accountability mechanisms include consideration of children with disabilities;

(2) The criteria for which special education has historically been held accountable and how these criteria have been assessed;

(3) How traditional education accountability mechanisms at both the systems level (e.g., State improvement planning and compliance monitoring, due process, and judicial resolution) and the individual child or student level (e.g., large-scale assessments provided with accommodations, alternate assessments, individualized education programs, individualized family services plans) have impacted outcomes for children with disabilities;

(4) How students with disabilities are affected by the recent large-scale, high stakes State and national accountability-based education policy reforms (e.g., State and district assessments, enhanced graduation and exiting requirements, governance and professional preparation and development reforms and other standards-based reform initiatives), including consideration of developed models of inclusive special education accountability (e.g., models developed by the National Association of State Directors of Special Education and the National Center for Educational Outcomes); and

(5) How changes and reforms in special education might better align with and support such large-scale, high stakes State and national accountability-based education policy reforms.

(b) In consultation with the Office of Special Education Programs (OSEP), design and conduct a strategic program of research that addresses knowledge gaps identified in paragraph (a) by:

(1) Conducting a rigorous research program that builds upon recent and current research on broad education policy reforms that incorporate high-stakes accountability mechanisms, including research by the recent Center for Policy Research on the Impact of General and Special Education Reform;

(2) Using a variety of methodologies designed to comprehensively examine the breadth of accountability mechanisms including how such mechanisms impact academic, functional, vocational, social, emotional and other outcomes for children and youth with disabilities;

(3) Conducting the program of research in settings that ensure that the impact of accountability-based education policy reforms on disabled minority, rural, low income, urban, limited English proficiency, immigrant, and migrant populations, will be examined; and

(4) Collaborating with other research institutions and studies and evaluations supported under IDEA, including the national assessment of special education activities (section 674(b) of IDEA).

(c) Design, implement, and evaluate a dissemination approach that links research to practice and promotes the use of current knowledge and ongoing research findings. This approach must:

(1) Develop linkages with Education Department technical assistance providers including the IDEA Linking Partnership technical assistance projects supported by OSEP to communicate research findings and distribute products; and

(2) Prepare the research findings and products from the project in formats that are useful for specific audiences, including general education researchers; and local, State, and national policymakers; as well as education practitioners.

(d) Fund at least five graduate students per year as research assistants who have concentrations in either education policy or disability issues.

(e) Meet with the OSEP project officer in the first four months of the project to review the program of research and dissemination approaches.

(f) In addition to the annual two-day Project Directors' meeting in Washington, DC listed in the ''General Requirements'' section of this notice, budget for another annual two-day trip to Washington, DC to collaborate with the OSEP project officer by sharing information and discussing implementation and dissemination issues.

In deciding whether to continue this project for the fourth and fifth years, the Secretary, will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit to the grantee, are to be performed during the last half of the project's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the project's budget for year two. These costs are estimated to be approximately $6,000;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrates the potential for advancing significant new knowledge.

Under this priority, the Secretary will make one award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $700,000 for any single budget period of 12 months. The Secretary may change the maximum amounts through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 70 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 7—Improving Post-School Outcomes: Identifying and Promoting What Works (84.324W)

Background:

With the passage of the Education of the Handicapped Act Amendments of 1983, a Federal initiative was begun to assist high school youth with disabilities in achieving their goals for adult life, including postsecondary education, continuing education, competitive employment, and independent living. This initiative has continued to be defined and developed in legislation, research and practice; and to a large extent, has been the impetus for the shift in special education from an emphasis on process to one of achieving better results for children with disabilities. The Office of Special Education Programs (OSEP) has funded approximately 500 secondary transition, postsecondary education, and dropout prevention and intervention projects since 1984 to develop, refine, and validate effective programs and practices.

The purpose of this priority is to fund one project that will —

(a) Synthesize the professional literature on improving academic results, secondary transition practice, postsecondary educational supports, and dropout prevention and intervention;

(b) Analyze important features, findings and outcomes of projects in these areas, including but not limited to, projects funded by OSEP, the Rehabilitation Services Administration (RSA), the Office of Postsecondary Education (OPE), the Office of Vocational and Adult Education (OVAE) and the National Institute on Disability and Rehabilitation Research (NIDRR); and

(c) Summarize, proactively disseminate, and publicize the results of the synthesis and analysis in an effort to inform policy and practice.

Priority:

The Secretary establishes an absolute priority to support a project that will identify and promote effective policy and practice that will improve results for secondary-aged youth and young adults with disabilities. At a minimum, this project must—

(a) Synthesize the extant professional knowledge base in each of four areas:

—Improving academic results
—Secondary transition practice
—Postsecondary educational supports, and
—Dropout prevention and intervention, including factors associated with early school exit for students with disabilities. Each synthesis must:

(1) Develop a conceptual framework around which research questions will be posed and the synthesis conducted. Develop these research questions with input from potential consumers of the synthesis to enhance the usability and validity of the findings. Consumers include technical assistance providers, policymakers, educators, other relevant practitioners, individuals with disabilities, and parents;

(2) Identify and implement rigorous social science methods for synthesizing the professional knowledge base (including but not limited to, integrative reviews (Cooper, 1982), best-evidence synthesis (Slavin, 1989), meta-analysis (Glass, 1977), multi-vocal approach (Ogawa & Malen, 1991), and National Institute of Mental Health consensus development program (Huberman, 1977));

(3) Implement procedures for locating and organizing the extant literature and ensure that these procedures address and guard against potential threats to the integrity of each synthesis, including the generalization of findings;

(4) Establish criteria and procedures for judging the appropriateness of each synthesis;

(5) Meet with OSEP to review the project's methodological approach for conducting the synthesis prior to initiating the synthesis;

(6) Analyze and interpret the professional knowledge base, including identification of general trends in the literature, points of consensus and conflict among the findings, and areas of evidence where the literature base is lacking. The interpretation of the literature base must address the contributions of the findings for improving policy, transition practice and drop out prevention and intervention, and research priorities in the four focus areas; and

(7) Submit a draft report of the synthesis in each of the focus areas, and based on reviews by OSEP staff and potential consumers, revise and submit a final report.

(b) Conduct an analysis to identify effective approaches and practices of the important features, findings and outcomes of projects (including, but not limited to, projects funded by OSEP, RSA, NIDRR, OVAE and OPE) in each of four areas:

—Improving academic results
—Secondary transition practice
—Postsecondary educational supports, and
—Dropout prevention and intervention, incorporating the following activities in each analysis:

(1) Identify the relevant projects for each analysis. Describe and implement procedures for locating and organizing relevant information on the individual projects, including sampling techniques, if appropriate;

(2) Articulate a research-based conceptual framework to guide the selection of variables to be examined within and across projects, including demographics, target population, purpose, activities, outcomes, and barriers. Pose research questions around which the analysis will be conducted. Develop these research questions with input from potential consumers of the information to enhance the usability and validity of the research findings. Consumers include technical assistance providers, policymakers, educators, other relevant practitioners, individuals with disabilities, and parents;

(3) Identify and implement rigorous methods for conducting each analysis;

(4) Meet with OSEP to review the project's research questions and methodological approach for conducting the analysis prior to initiation;

(5) Analyze and interpret the findings of the analysis, including similarities and differences among project goals, activities, staffing and costs; points of consensus and conflict among the findings or outcomes of the demonstrations, and the characteristics of model programs that hold significant promise for the field based upon outcome data. In addition, the analysis must link to the synthesis on this topic and provide direction for future policy formulation, practice implementation, and research priorities; and

(6) Submit a draft report of the analysis in each of the focus areas, and based on reviews by OSEP staff and potential consumers, revise and submit a final report.

(c) Summarize, proactively disseminate, and publicize the results of this analysis to inform policy and practice, incorporating the following activities into the project design:

(1) Develop and implement a communication plan that includes the types of products to be created, proposed audiences, procedures for adapting the form and content of the products based upon the audience or audiences, vehicles for dissemination, and timelines. In particular, address how the project will provide updated information at regular intervals to each of the following audiences: OSERS-funded technical assistance and dissemination projects, the Parent Training and Information Centers; and the State Improvement program grantees. The project may propose collaborative dissemination activities with one or more of these projects; and

(2) Meet with OSEP to review the project's communication plan prior to implementation.

In addition to the annual two-day Project Directors' meeting in Washington, DC listed in the ''General Requirements'' section of this notice, projects must budget for another meeting each year in Washington, DC with OSEP to share information and discuss project implementation issues.

In deciding whether to continue this project for the fourth and fifth years, the Secretary, will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit to the grantee, are to be performed during the last half of the project's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the project's budget for year two. These costs are estimated to be approximately $6,000;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrates the potential for advancing significant new knowledge.

Under this priority, the Secretary will make one award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards.

Competitive Preferences: Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $500,000 for any single budget period of 12 months. The Secretary may change the maximum

amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 60 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Special Education—Personnel Preparation To Improve Services and Results for Children With Disabilities (CFDA 84.325)

Purpose of Program

The purposes of this program are to (1) help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and (2) to ensure that those personnel have the skills and knowledge, derived from practices that have been determined through research and experience to be successful, that are needed to serve those children.

Eligible Applicants

Institutions of higher education.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and 97; (b) The selection criteria for the priorities under this program are drawn from the EDGAR general selection menu. The specific selection criteria for each priority are included in the funding application packet for the applicable competition.

Additional Requirement for All Personnel Preparation Program Priorities

Student financial assistance is authorized only for the preservice preparation of special education and related services personnel who serve children ages 3 through 21, early intervention personnel who serve infants and toddlers, and leadership personnel who work in these areas.

Priority

Under section 673 of the Act and 34 CFR 75.105 (c)(3) we consider only applications that meet one of the following priorities:

Absolute Priority 1—Preparation of Special Education, Related Services, and Early Intervention Personnel To Serve Infants, Toddlers, and Children With Low-Incidence Disabilities (84.325A)

Background:

The national demand for educational, related services, and early intervention personnel to serve infants, toddlers, and children with low-incidence disabilities exceeds available supply. However, because of the small number of these personnel needed in each State, institutions of higher education and individual States have not given priority to programs that train personnel to work with those with low-incidence disabilities. Moreover, of the programs that do exist, many are not producing graduates with the prerequisite skills needed to meet the needs of the low-incidence disability population. Thus, Federal support is required to ensure an adequate supply of personnel to serve children with low-incidence disabilities and to improve the quality of appropriate training programs so that graduates possess necessary prerequisite skills.

Priority: The Secretary establishes an absolute priority to support projects that increase the number and quality of personnel to serve children with low-incidence disabilities. This priority supports projects that provide preservice preparation of special educators, early intervention personnel, and related services personnel at the associate, baccalaureate, master's, or specialist level.

A preservice program is a program that leads toward a degree, certification, or professional licence or standard and may include the preparation of currently employed personnel who are seeking additional degrees, certifications, endorsements, or licences.

The term ''low-incidence disability'' means a visual or hearing impairment, or simultaneous visual and hearing impairments, a significant cognitive impairment, or any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

Applicants may propose to prepare one or more of the following types of personnel:

(a) Special educators, including early childhood, speech and language, adapted physical education, and assistive technology personnel that work with children with low-incidence disabilities;

(b) Related services personnel who provide developmental, corrective, and other support services that assist children with low-incidence disabilities to benefit from special education. Both comprehensive programs, and specialty components within a broader discipline, that prepare personnel for work with the low-incidence population may be supported; or

(c) Early intervention personnel who serve children birth through age 2 (until the third birthday) with low-incidence disabilities and their families. For the purpose of this priority, all children who require early intervention services are considered low-incidence. Early intervention personnel include persons who train, or serve as consultants to, service providers and case managers.

The Secretary particularly encourages projects that address the needs of more than one State, provide multi-disciplinary training, and provide for collaboration among several training institutions and between training institutions and public schools. In addition, projects that foster successful coordination between special education and regular education professional development programs to meet the needs of children with low-incidence disabilities in inclusive settings are encouraged.

Each project funded under this absolute priority must—

(a) Prepare personnel to address the specialized needs of children with low-incidence disabilities from different cultural and language backgrounds by;

(1) Determining the additional competencies needed for personnel to understand and work with culturally diverse populations; and

(2) Infusing those competencies into early intervention, special education and related services training programs.

(b) Incorporate research-based practices in the design of the program and the curricula;

(c) Incorporate curricula that focus on improving results for children with low-incidence disabilities;

(d) Promote high expectations for students with low-incidence disabilities and foster access to the general curriculum in the regular classroom, wherever appropriate; and

(e) If the project prepares personnel to provide services to visually impaired or blind children that can be appropriately provided in Braille, prepare those individuals to provide those services in Braille.

To be considered for an award, an applicant must satisfy the following requirements contained in section 673(f)–(h) of the Act—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development (CSPD) under Parts B and C of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education, related services, or early intervention personnel; and

(e) Ensure that individuals who receive financial assistance under the proposed project will subsequently provide, special education and related services to children with disabilities, or early intervention services to infants and toddlers with disabilities, for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance. Applicants must describe how they will notify scholarship recipients of this work or repay requirement, which is specified under section 673(h)(1) of the Act (20 U.S.C. 1473(h)(1)). The requirement must be implemented consistent with section 673(h)(1) of the Act and with applicable regulations in effect prior to the awarding of grants under this priority. Applicants must designate at least 55 percent of the budget for student support or provide sufficient justification for any designation less than 55 percent for student support.

Under this absolute priority, the Secretary plans to award approximately:

- 60 percent of the available funds for projects that support careers in special education, including early childhood educators;
- 10 percent of the available funds for projects that support careers in educational interpreter services for hearing impaired individuals;
- 15 percent of the available funds for projects that support careers in related services, other than educational interpreter services; and
- 15 percent of the available funds for projects that support careers in early intervention.

Competitive Priority:

Within this absolute priority, we will give the following competitive preference under 34 CFR 75.105(c)(2)(i) to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for recruiting students from underrepresented populations. Up to five (5) of these 10 points would be based on the extent to which the application includes effective strategies for recruiting students with disabilities.

In addition, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of these competitive preferences, applicants can be awarded up to a total of 20 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 120 points.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $300,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 40 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 2—Preparation of Leadership Personnel (84.325D)

This priority supports projects that conduct the following preparation activities for leadership personnel:

(a) Preparing personnel at the doctoral, and postdoctoral levels of training to administer, enhance, or to provide special education, related or early intervention services for children with disabilities; or

(b) Masters and specialist level programs in special education administration.

Projects funded under this absolute priority must—

Prepare personnel to work with culturally and linguistically diverse populations by;

(a) Determining the additional competencies for personnel needed to understand and work with culturally diverse populations; and

(b) Infusing those competencies into early intervention, special education and related services training programs.

To be considered for an award, an applicant must satisfy the following requirements contained in section 673(f)–(h) of the Act—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development under Parts B and C of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project;

(c) Meet State and professionally-recognized standards for the preparation of leadership personnel in special education, related services or early intervention fields; and

(d) Ensure that individuals who receive financial assistance under the proposed project will subsequently perform work related to their preparation for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance. Applicants must describe how they will notify scholarship recipients of this work or repay requirement, which is specified under section 673(h)(2) of the Act (20 U.S.C. 1473(h)(2)). The requirement must be implemented consistently with section 673(h)(2) of the Act and with applicable regulations in effect prior to the awarding of grants under this priority. Applicants must designate at least 65 percent of the budget for student support or provide sufficient justification for any designation less than 65 percent for student support.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for recruiting students from underrepresented populations. Up to five (5) of these 10 points would be based on the extent to which the application includes effective strategies for recruiting students with disabilities.

In addition, we will give the following competitive preference under section

606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of these competitive preferences, applicants can be awarded up to a total of 20 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 120 points.

Project Period: Up to 48 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 40 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 3—Preparation of Personnel in Minority Institutions (84.325E)

This priority supports awards to institutions of higher education with minority student enrollments of at least 25 percent, including Historically Black Colleges and Universities, for the purpose of preparing personnel to work with children with disabilities. Awards must be made consistent with the objectives in section 673(a) of the Act.

Projects funded under this absolute priority must —

Prepare personnel to work with culturally and linguistically diverse populations by;

(a) Determining the additional competencies needed for personnel to understand and work with culturally diverse populations; and

(b) Infusing those competencies into early intervention, special education, and related services training programs.

The Secretary particularly encourages projects that:

(a) Have effective strategies for recruiting and retraining students from culturally and linguistically diverse populations;

(b) Focus on providing student financial support; and

(c) Include student support systems such as tutors, mentors, and other innovative practices.

This program supports projects at all levels, from the associate degree through the post-doctoral level.

To be considered for an award, an applicant must satisfy the following requirements contained in section 673(f)-(h) of the Act—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive system of personnel development under Parts B and C of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education, related services, or early intervention personnel, if the purpose of the project is to assist personnel in obtaining degrees; and

(e) Ensure that individuals who receive financial assistance under the proposed project will subsequently provide special education and related services to children with disabilities, or early intervention services for infants and toddlers, for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance. Applicants must describe how they will notify scholarship recipients of this work or repay requirement, which is specified under section 673(h)(1) of the Act (20 U.S.C. 1473(h)(1)). The requirement must be implemented consistently with section 673(h)(1) of the Act and with applicable regulations in effect prior to the awarding of grants under this priority. Applicants must designate at least 55 percent of the budget for student support or provide sufficient justification for any designation less than 55 percent for student support.

Competitive Preference: Within this absolute priority, we will give the following competitive preference under 34 CFR 75.105(c)(2)(i) to applicant institutions that are otherwise eligible for funding under this priority:

(a) Up to ten (10) points based on the extent to which an application includes effective strategies for recruiting students from underrepresented populations. Up to five (5) of these 10 points would be based on the extent to which the application includes effective strategies for recruiting students with disabilities.

(b) Up to ten (10) points to applicant institutions that have not received an FY 1999 or FY 2000 award under the IDEA personnel preparation program.

In addition, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of these competitive preferences applicants can be awarded up to a total of 30 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting all of these competitive preferences could earn a maximum total of 130 points.

Project Period: Up to 48 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 40 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 4—Improving the Preparation of Personnel To Serve Children With High-Incidence Disabilities (84.325H)

Background: State agencies, university training programs, local schools, and other community-based agencies and organizations confirm both the importance and the challenge of improving training programs for

personnel to serve children with high-incidence disabilities and of meeting the staffing needs of localities experiencing chronic shortages of these personnel.

This priority is intended to improve personnel preparation programs throughout the Nation and help meet shortages in particular areas. The project requirements, in conjunction with the identified competitive priorities, also reflect a number of important factors that are common to effective personnel preparation programs. These factors are:

(a) Collaboration among governmental, educational and community-based organizations on the Federal, State, and local levels in meeting personnel needs;

(b) Field-based training opportunities for students to use acquired knowledge and skills in schools reflecting wide contextual student diversity, and high poverty schools;

(c) Multi-disciplinary training of teachers, including regular and special education teachers, and related services personnel;

(d) Coordinating personnel preparation programs aimed at addressing chronic personnel shortages with State practices for addressing such needs;

(e) Addressing shortages of teachers in particular geographic and content areas;

(f) Integration of research based curriculum and pedagogical knowledge and practices; and

(g) Meeting the needs of trainees, and of children with disabilities, from diverse backgrounds.

Priority: Consistent with section 673(e) of the Act, the purpose of this priority is to develop or improve, and implement, programs that provide preservice preparation for special and regular education teachers and related services personnel in order to meet the diverse needs of children with high incidence disabilities (such as mild or moderate mental retardation, speech or language impairments, emotional disturbance, or specific learning disability) and to enhance the supply of well-trained personnel to serve these children in areas of chronic shortage. Training of para-professionals to serve children with high-incidence disabilities is authorized under this priority. (Training of early intervention personnel is addressed under the preparation of personnel to serve children with low-incidence disabilities, and therefore, is not included as part of this priority).

A preservice program is defined as one that leads toward a degree, certification, or professional licence or standard, and may be supported at the associate, baccalaureate, master's or specialist level. A preservice program may include the preparation of currently employed personnel who are seeking additional degrees, certifications, endorsements, or licences.

Projects funded under this priority must—

(a) Develop or improve, and implement, partnerships that are mutually beneficial to grantees and LEAs in order to promote continuous improvement of preparation programs;

(b) Use research-based curriculum and pedagogy to prepare personnel who are able to assist students with disabilities in achieving in the general education curricula and able to improve student outcomes;

(c) Utilize effective instructional strategies and provide practice opportunities for students on how special education, related services, and regular education personnel can collaborate to improve results for children with disabilities;

(d) Include field-based training opportunities for students in schools reflecting wide contextual and student diversity, including high poverty schools; and

(e) Prepare personnel to work with culturally and linguistically diverse populations by;

(1) Determining the additional competencies needed for personnel to understand and work with culturally diverse populations; and

(2) Infusing those competencies into special education and related services training programs.

An applicant must satisfy the following requirements contained in section 673(f)-(h) of the Act:

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development (CSPD) under Part B of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education and related services personnel; and

(e) Ensure that individuals who receive financial assistance under the proposed project will subsequently provide special education and related services to children with disabilities, for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance. Applicants must describe how they will notify scholarship recipients of this work or repay requirement, which is specified under section 673(h)(1) of the Act (20 U.S.C. 1473(h)(1)). The requirement must be implemented consistently with section 673(h)(1) of the Act and with applicable regulations in effect prior to the awarding of grants under this priority. Applicants must designate at least 65 percent of the budget for student support or provide sufficient justification for any designation less than 65 percent for student support.

Competitive Preferences:

Within this absolute priority we will give the following competitive preferences under 34 CFR 75.105(c)(2)(i) to applications that are otherwise eligible for funding under this priority.

(a) Up to ten (10) points based on the extent to which an application includes effective strategies for recruiting students from underrepresented populations. Up to five (5) of these ten points would be based on the extent to which the application includes effective strategies for recruiting students with disabilities.

(b) Up to ten (10) points based on the extent to which an application demonstrates that the majority of the graduates of its program consistently enter jobs in which they serve children with disabilities in high poverty—rural or inner city—areas.

In addition, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of these competitive preferences applicants can be awarded up to a total of 30 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting all of these competitive preferences could earn a maximum total of 130 points.

Project Period: The maximum funding period for awards is 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 in Federal funding for any single budget period of twelve months.

Page Limits: The maximum page limit for this priority is 40 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities

Purpose of Program

The purpose of this program is to provide technical assistance and information through such mechanisms as institutes, regional resource centers, clearinghouses and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and 97; (b) The selection criteria for the priorities under this program are drawn from the EDGAR general selection criteria menu. The specific selection criteria for each priority are included in the funding application packet for the applicable competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Eligible Applicants

State and local educational agencies, institutions of higher education, other public agencies, private nonprofit organizations, outlying areas, freely associated States, Indian tribes or tribal organizations, and for-profit organizations.

Priority:

Under section 685 of IDEA and 34 CFR 75.105(c)(3) we consider only applications that meet the following priorities:

Absolute Priority 1—Projects for Children Who Are Deaf-Blind (84.326C)

Background: IDEA includes provisions designed to ensure that each child with a disability is provided a high-quality individual program of services to meet his or her developmental and educational needs. For children who are deaf and blind to receive those services, intensive technical assistance must be afforded State and local educational agencies regarding appropriate educational placements, accommodations, environmental adaptations, support services and other matters.

In addition, given the severity of deaf-blindness and the low-incidence nature of this population, many early intervention programs or local school districts lack personnel with the training or experience to serve children who are deaf-blind. For these reasons, the following priority supports projects that provide specialized technical assistance regarding the provision of early intervention, special education, related, and transitional services to children who are deaf-blind.

In FY 1999, 48 awards were made under this priority. Of the 48 awards issued, 43 were authorized for a 48-month project period; the remaining 5 awards, which serve Nebraska, Oregon, New York, Rhode Island and South Dakota, were authorized for a 12-month period. The purpose of this notice is to invite applications for FY 2000 awards to support projects which will serve one or more of these 5 States and be authorized for up to 36 months.

Priority:

(a) This priority supports projects that build the capacity of State and local agencies to facilitate the achievement of improved outcomes by children who are deaf-blind, and their families. This priority specifically supports State and Multi-State Projects.

(b) State and Multi-State Projects provide technical assistance, information, and training that address the early intervention, special education, related services, and transitional service needs of children with deaf-blindness and enhance State capacity to improve services and outcomes for those children and their families. Projects must:

(1) Identify specific project goals and objectives in providing an appropriate array of technical assistance services;

(2) Facilitate systemic-change goals and school reform;

(3) Enhance State capacity to improve services and outcomes for deaf-blind children and their families;

(4) Provide technical assistance, information, and training that:

(i) Focus on implementation of research-based, effective practices that result in appropriate assessment, placement, and support services to all children who are deaf-blind in the State;

(ii) Help administrators develop and operate effective State and local programs for serving children who are deaf-blind;

(iii) Ensure that service providers have the necessary skills and knowledge to effectively serve children who are deaf-blind; and

(iv) Address the needs of families of children who are deaf-blind;

(5) Maintain basic demographic information on children with deaf-blindness in the State for program planning and evaluation purposes. The data should include hearing, vision, etiology, educational placement, living arrangement, and other information necessary to ensure a high quality program that meets the needs of the State or States served by the project;

(6) Maintain an assessment of current needs of the State and utilize data to determine State-wide priorities for technical assistance services across all age ranges;

(7) Develop and implement procedures to evaluate the impact of program activities on services and outcomes for children with deaf-blindness and their families, and on increasing State and local capacity to provide services and facilitate improved outcomes. The procedures must provide for—

(i) Evaluating project goals and objectives, and the effectiveness of project strategies relative to those goals and objectives; and

(ii) Including measures of change in outcomes for children with deaf-blindness and other indicators that document actual benefits of conducting the project;

(8) Facilitate ongoing coordination and collaboration with State and local educational agencies, as well as other relevant agencies and organizations responsible for providing services to children who are deaf-blind by —

(i) Promoting service integration that enables children with deaf-blindness to receive services in natural environments and inclusive settings, as appropriate; and

(ii) Encouraging systemic change efforts for addressing the needs of children with deaf-blindness by improving education opportunities and inter-agency cooperation, and reducing duplication of effort;

(9) Establish and maintain an advisory committee to assist in promoting project activities. Each committee must include at least one individual with deaf-blindness, a parent of a child with deaf-blindness, a representative of each State educational agency and each State lead agency under Part C of IDEA in the State (or States) served by the project, and a

limited number of professionals with training and experience in serving children with deaf-blindness; and

(10) In addition to the annual two-day Project Directors' meeting in Washington, DC listed in the ''General Requirements'' section of this notice, budget for another annual two-day trip to Washington, DC to collaborate with the OSEP project officer by sharing information and discussing implementation issues.

The Secretary may make awards under this priority to support single or multi-State projects. A State may be served by only one supported project.

The Secretary considers the following factors in determining the funding level for each award for a single or multi-State project award:

(i) The total number of children birth through age 21 in the State;

(ii) The number of children with deaf-blindness in the State;

(iii) The State per pupil cost; and

(iv) The quality of the application submitted.

Funds awarded under this priority may not be used for direct early intervention, special education, or related services provided under Parts B and C of IDEA.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 36 months.

Estimated Range: The estimated range of awards for State and Multi-State projects is $40,000–$550,000.

Maximum Project Award: The Secretary rejects and does not consider an application for a State and Multi-State project that proposes a budget exceeding $550,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 2—Outreach Services to Minority Entities To Expand Research Capacity (84.326M)

Background:

The Congress has found that the Federal Government must be responsive to the growing needs of an increasingly more diverse society and that a more equitable distribution of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

The opportunity for full participation in awards for grants, cooperative agreements, and contracts by Historically Black Colleges and Universities (HBCUs) and other institutions of higher education with minority enrollments of at least 25 percent (OMIs) is essential if we are to take full advantage of the human resources we have to improve results for children with disabilities.

This priority focuses on assisting HBCUs and OMIs to prepare scholars for careers in research on early intervention, special education, and related services for infants, toddlers, and children with disabilities, consistent with the purposes of the program, described in section 672 of the Act. This preparation must consist of engaging both faculty and students at HBCUs and OMIs in special education research activities. The activities focus on an area of critical need that has material application in today's changing environment and will likely be the subject of future research efforts—*the special education of children in urban and high poverty schools.* By building a cadre of experienced researchers on this important topic, the chances for increased participation in awards for grants, cooperative agreements and contracts by HBCUs and OMIs will be more likely.

The association between socioeconomic status and enrollment in special education has been well-documented. Available data from the National Longitudinal Transition Study (NLTS) show that 68 percent of students in special education live in a household where the income is less than $25,000 per year versus 39 percent of the general youth population.

This association is heightened in urban school districts and, to a lesser extent, rural districts. NLTS data reveal that only 34 percent of students in special education live in suburban school districts compared to 48 percent of all students. Data from the Office for Civil Rights indicate that 30 percent of all inner-city students live in poverty compared to 18 percent of students in non-inner-city areas.

Urban school districts face a variety of unique challenges in meeting the educational needs of their students. Their schools often have high per student costs and limited financial resources. Their students are disproportionately poor and the population of individuals with limited English proficiency is among the fastest growing populations with special needs in some of these districts. This disproportionate representation of poor children in special education is also likely to be uniquely influenced by culturally diverse and urban settings, posing both opportunities and problems in the provision of special education services.

Priority:

This priority supports a project whose purpose is to increase the participation of HBCUs and OMIs in discretionary research and development grant activities authorized under IDEA, and to increase the capacity of individuals at these institutions to conduct research and development activities in early intervention, special education, and related services. The project must implement Congress' direction in section 661(d)(2)(A)(i) to provide outreach and technical assistance to these institutions to increase their participation in competitions for research, demonstration and outreach grants, cooperative agreements, and contracts funded under the IDEA. Activities must include:

(a) Conducting research activities at HBCUs and OMIs as explained later in this notice that link scholars at HBCUs and OMIs with researchers at institutions with an established research capacity in a mentoring relationship to develop both individual and institutional research capacity at those HBCUs and OMIs with a demonstrated need for capacity development.

(b) Providing linkages between HBCUs and OMIs with a demonstrated need for capacity development and institutions with an established research capacity to provide opportunities for researchers at those HBCUs and OMIs to develop first-hand experience in the

grants and contracts application process.

(c) Providing outreach and technical assistance to doctoral students at HBCUs and OMIs to increase their participation in competitions for grant awards to support student-initiated research in early intervention, special education, and related services.

(d) Establishing a cooperative partnership with the Disability and Rehabilitation Research Project (CFDA 84.133A–15) funded under section 21(b)(2)(A) of the Rehabilitation Act. This project awarded by the National Institute on Disability and Rehabilitation Research, was established to improve the quality and utility of research related to minority individuals with disabilities by (1) building capacity of researchers, especially those from minority backgrounds, to conduct disability research, especially related to rehabilitation of minorities, and (2) enhancing knowledge and awareness of issues related to minority individuals with disabilities among disability and rehabilitation researchers generally.

All research activities must be conducted for the purpose of capacity building. The research project must include one or more components focused on issues related to improving the delivery of special education services to, and educational results for, children with disabilities in urban and high poverty schools. Other possible research topics may include:

(a) Effective intervention strategies that make a difference in the provision of a free appropriate public education to children with disabilities;

(b) Practices to promote the successful inclusion of children with disabilities in the least restrictive environment;

(c) Strategies for establishing high expectations for children with disabilities and increasing their participation in the general curriculum provided to all children;

(d) Strategies for promoting effective parental participation in the educational process, especially among parents who have difficulty in participating due to linguistic, cultural, or economic differences;

(e) Effective disciplinary approaches, including behavioral management strategies, for ensuring a safe and disciplined learning environment;

(f) Strategies to improve educational results for students with disabilities in secondary education settings and promote their successful transition to postsecondary settings; or

(g) Effective practices for promoting the coordination of special education services with health and social services for children with disabilities and their families.

The project must ensure that findings are communicated in appropriate formats for researchers. The project must also ensure that findings of importance to other audiences, such as teachers, administrators, and parents, are made available to the Department of Education's technical assistance, training, and dissemination projects for distribution to those audiences.

The project must demonstrate experience and familiarity in research on children with disabilities in urban and high poverty schools with predominantly minority enrollments. The project must also demonstrate experience in capacity development in special education research, as well as a thorough understanding of the strengths and needs of HBCUs and OMIs.

In addition to the annual two-day Project Directors' meeting in Washington, DC listed in the ''General Requirements'' section of this notice, the project must budget for another annual two-day trip to Washington, DC to collaborate with the Federal project officer and other projects funded under this priority by sharing information and discussing implementation, and dissemination issues, including the carrying out of cross-project dissemination activities.

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit to the grantee, are to be performed during the last half of the project's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the project's budget for year two. These costs are estimated to be approximately $6,000;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrates the potential for advancing significant new knowledge.

Under this priority, the Secretary will make one award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 60 months.

Maximum Awared: The Secretary rejects and does not consider an application that proposes a budget exceeding $1,000,000 for any single budget period of 12 months to support one cooperative agreement. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 75 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Technology and Media Services for Individuals With Disabilities (CFDA 84.327)

Purpose of Program

The purpose of this program is to promote the development, demonstration, utilization of technology and to support educational media activities designed to be of educational value to children with disabilities. This program also provides support for some captioning, video description, and cultural activities.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and 97; (b) The selection criteria for the priorities under this program are drawn from the EDGAR general selection criteria menu. The specific selection criteria for each priority are

included in the funding application packet for the applicable competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Eligible Applicants

State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Priority

Under section 687 of IDEA and 34 CFR 75.105(c)(3), we consider only applications that meet the following priority:

Absolute Priority 1—Steppingstones of Technology Innovation for Students with Disabilities (84.327A)

The purpose of this priority is for the support of projects that—

(a) Select and describe a technology-based approach for achieving one or more of the following purposes for early intervention, preschool, elementary, middle school or high school students with disabilities: (1) Improving the results of education or early intervention; (2) improving access to and participation in the general curriculum, or appropriate activities for preschool children; and (3) improving accountability and participation in educational reform. The technology-based approach must be an innovative combination of a new technology and additional materials and methodologies that enable the technology to achieve educational purposes for students with disabilities;

(b) Justify the approach on the basis of research or theory that supports the effectiveness of the technology-based approach for achieving one or more of the purposes presented in paragraph (a);

(c) Clearly identify and conduct work in *ONE* of the following phases:

(1) *Phase 1—Development:* Projects funded under Phase 1 must develop and refine a technology-based approach, and test its feasibility for use with students with disabilities. Activities may include development, adaptation, and refinement of technology, curriculum materials, or instructional methodologies. Activities must include formative evaluation. The primary product of Phase 1 should be a promising technology-based approach that is suitable for field-based evaluation of effectiveness.

(2) *Phase 2—Research on Effectiveness:* Projects funded under Phase 2 must select a promising technology-based approach that has been developed in a manner consistent with Phase 1, and subject the approach to rigorous field-based research and evaluation to determine effectiveness and feasibility in educational or early intervention settings. Approaches studied in Phase 2 may have been developed with previous funding under this priority or with funding from other sources. Products of Phase 2 include a further refinement and description of the technology-based approach, and sound evidence that, in a defined range of real world contexts, the approach can be effective in achieving one or more of the purposes presented in paragraph (a).

(3) *Phase 3—Research on Implementation:* Projects funded under Phase 3 must select a technology-based approach that has been evaluated for effectiveness and feasibility in a manner consistent with Phase 2, and must study the implementation of the approach in multiple, complex settings to acquire an improved understanding of the range of contexts in which the approach can be used effectively, and the factors that determine the effectiveness and sustainability of the approach in this range of contexts. Approaches studied in Phase 3 may have been developed and tested with previous funding under this priority or with funding from other sources. Factors to be studied in Phase 3 include factors related to the technology, materials and methodologies that constitute the technology-based approach. Also to be studied in Phase 3 are contextual factors associated with students, teacher attitudes and skills, physical setting, curriculum and instruction or early intervention approaches, resources, and professional development and policy supports, etc. Phases 2 and 3 can be contrasted as follows: Phase 2 studies the effectiveness the approach can have, while Phase 3 studies the effectiveness the approach is likely to have in sustained use in a range of typical educational settings. The primary product of Phase 3 should be a set of research findings that can be used to guide dissemination and utilization of the technology-based approach;

(d) In addition to the annual two-day Project Directors' meeting in Washington, DC mentioned above in the ''General Requirements'' section of this notice, budget for another annual trip to Washington, DC to collaborate with the Federal project officer and the other projects funded under this priority, and to share information and discuss findings and methods of dissemination; and

(e) Prepare products from the project in formats that are useful for specific audiences as appropriate, including parents, administrators, teachers, early intervention personnel, related services personnel, researchers, and individuals with disabilities.

Projects on Children From Birth to 3: The Secretary intends to fund at least two projects focusing on technology-based approaches for children with disabilities, ages birth to 3.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: The Secretary intends to fund at least three projects in each phase. Projects funded under Phase 1 will be funded for up to 24 months. Projects funded under Phase 2 will be funded for up to 24 months. Projects funded under Phase 3 will be funded for up to 36 months. During the final year of projects funded under Phase 3, the Secretary will determine whether or not to fund an optional six-month period for additional dissemination activities.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months for projects in Phases 1 and 2, and $300,000 for projects in Phase 3. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 40 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 2—Dramatic and Theatrical Experiences for Individuals Who Are Deaf or Hard of Hearing (84.327D)

Background:

The National Theatre of the Deaf's Professional Training Program for Deaf Theatre Personnel was established through a grant from the former Department of Health, Education and Welfare in 1967. The U.S. Department of Education, when established, continued to fund this training program, along with other programs conducted by the National Theatre of the Deaf. These programs have been key sources for the recruitment and training of deaf and, in some instances, hearing individuals in a variety of theatrical and production areas. These training and production projects are intended to promote cross-cultural understanding and to help enable deaf and hearing populations explore ways to overcome communication barriers. This, in turn, will provide opportunities for deaf individuals to participate in and contribute to society as a whole. This priority proposes to continue such activities.

Priority:

This priority supports, on a national level, a series of programs that will provide for the development and will broaden the theatrical and general cultural experience of the deaf and hard of hearing populations in the United States. This priority will enable individuals who are deaf or hard of hearing to participate in specialized professional actor's training and theatrical production that would otherwise be unavailable to them. Specifically, this priority will support—

(a) The provision of training in drama and theatrical production to actors and artists who are deaf or hard of hearing;

(b) The promotion of awareness of the artistic and intellectual achievement of people who are deaf or hard of hearing;

(c) The provision of outreach activities including professional and technical assistance to regional and local cultural programs; and

(d) The production of video-taped performances for distribution and, whenever possible, national and regional television broadcast.

To be considered for funding under this priority, a project must:

(a) Describe the training program(s), including curriculum and length and duration of the training periods;

(b) Identify the type of theatrical productions that will take place;

(c) Identify outreach activities that will be conducted; and

(d) Ensure that at least one major production will be videotaped for later use on television or through duplicated cassettes.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $800,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding these maximum amounts. The Secretary may change the maximum amounts through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 3—Research on Educational Captioning (84.327H)

This priority supports research on captioning of educational media and materials. Research can be based on the instructional use of captioning or the use of captioning as a language development tool for enhancing the reading and literacy skills of individuals who are deaf or hard of hearing. Media and technologies explored or used by projects funded under this priority may include, but are not limited to (1) Television—including high-definition television; (2) videos; and (3) other media and multi-media technologies such as interactive videodiscs and CD–ROMs.

Under this competition, projects must—

(a) Identify specific technological approaches that would be investigated;

(b) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the strategies to be studied, the research design, and target population;

(c) Collect, analyze and report (1) characteristics and outcome data (actual rather than expected results), including the settings, the service providers, and the individuals targeted by the project; and (2) multiple, functional outcome data on the individuals who are the focus of the technological approaches;

(d) Conduct the research in realistic settings such as residential or integrated schools or colleges, or in community settings, as appropriate; and

(e) Conduct the research using methodological procedures that will: (1) Produce unambiguous findings regarding the effects of approaches and effects of the interaction among particular approaches and particular groups of individuals or particular settings; and (2) permit use of the findings in policy analyses.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $125,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding these maximum amounts. The Secretary may change the

maximum amounts through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice .

Absolute Priority 4—Video Description (84.327J)

Background:

This priority supports cooperative agreements to provide video description in two areas: (1) Broadcast and cable television programs; and (2) home video. The purpose of this activity will be to describe television programs and videos to make television programming and home videos more accessible to children and adults with visual disabilities. The intent of this priority is to enable children, and adults who are blind or have low vision to have access to television programming and home videos in order to enhance shared educational, social, and cultural experiences for children and adults with visual disabilities.

Note: In accordance with section 687(c)(2) of IDEA, funds from an award made under this priority may only be used for video descriptions of educational, news, and informational television programs beginning October 1, 2001. This may require a grantee to change some or all of the programming that it describes under this award as of this date.

Priority:

To be considered for funding under this priority, a project must —

(a) Include criteria that take into account the preference of consumers for particular topics of interest, the diversity of programs or videos available, and the contribution of these programs or videos to the general educational, social, and cultural experiences of individuals with visual disabilities;

(b) Identify the total number of hours and cost for each program to be described;

(c) Identify for each program to be described, the source, and amount of any private or other public support, if any;

(d) Demonstrate the willingness of program or video producers to permit video description and distribution of their program or video; and

(e) Evaluate the effectiveness of the methods and technologies used in providing this service and the impact on intended populations.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding these maximum amounts. The Secretary may change the maximum amounts through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 5—Closed Captioned Sports Programs (84.327P)

Background:

This priority supports cooperative agreements to continue and expand closed-captioning of major national sports programs shown on national commercial broadcast or basic cable television networks. Captioning provides a visual representation of the audio portion of the programming and enables children, young adults, and adults who are deaf or hard of hearing to participate in the shared experience of national sporting events. Funds provided under this priority may be used to support no more than fifty percent of the captioning costs.

Note: In accordance with section 687(c)(2) of IDEA, funds from an award made under this priority may only be used for captioning educational, news, and informational television programs beginning October 1, 2001. This may require a grantee to change some or all of the programming that it captions under this award as of this date.

Priority:

To be considered for funding under this competition, a project must—

(a) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular sports programs;

(b) Provide a back-up system that will ensure quality captioning service;

(c) Identify and support a consumer advisory group that would meet at least annually;

(d) Identify the total number of hours and the cost per program hour for each of the programs captioned;

(e) Identify for each program to be captioned, the source, and amount of any private or other public support, if any;

(f) Demonstrate the willingness of major national commercial broadcast or basic cable networks to permit captioning of their programs; and

(g) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Captions produced under these awards may be reformatted or otherwise adapted by owners or rights holders of programming, including networks or syndicators, for future airings or other distributions.

Competitive Preference: Within this absolute priority, we will award the following competitive preference, under 34 CFR 75.105(c)(2)(i): An additional 10 points to an applicant that proposes to include in the range of programs to be captioned at least 52 hours a year of sports programming originally broadcast in Spanish.

In addition, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of these competitive preferences, applicants can be awarded up to a total of 20 points in addition to those awarded under the published

selection criteria for this priority. That is, an applicant meeting these competitive preferences could earn a maximum total of 120 points.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $100,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding these maximum amounts. The Secretary may change the maximum amounts through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Special Education—Training and Information for Parents of Children With Disabilities [CFDA No. 84.328]

Purpose of Program

The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 97; and (b) The selection criteria for this priority are drawn from the EDGAR general selection criteria menu. The specific selection criteria for this priority are included in the funding application packet for this competition.

Priority

Under sections 661(e)(2) and 683 of the Act, and 34 CFR 75.105(c)(3), we will give an absolute preference to applications that meet this absolute priority:

Absolute Priority—Community Parent Resource Centers (84.328C)

The purpose of this statutory priority is to support local parent training and information centers that will help ensure that underserved parents of children with disabilities, including low-income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information they need to enable them to participate effectively in helping their children with disabilities to—

(a) Meet developmental goals and, to the maximum extent possible, those challenging standards that have been established for all children; and

(b) Be prepared to lead productive independent adult lives, to the maximum extent possible.

Each community parent training and information center supported under this priority must—

(a) Provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the project;

(b) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under section 615 of the Act, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in the Act;

(c) Serve the parents of infants, toddlers, and children with the full range of disabilities by assisting parents to—

(1) Better understand the nature of their children's disabilities and their educational and developmental needs;

(2) Communicate effectively with personnel responsible for providing special education, early intervention, and related services;

(3) Participate in decision making processes and the development of individualized education programs and individualized family service plans;

(4) Obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

(5) Understand the provisions of the Act for the education of, and the provision of early intervention services to, children with disabilities; and

(6) Participate in school reform activities;

(d) Contract with the State education agencies, if the State elects to contract with the community parent resource centers, for the purpose of meeting with parents who choose not to use the mediation process, to encourage the use and explain the benefits of mediation, consistent with sections 615(e)(2)(B) and (D) of the Act;

(e) In order to serve parents and families of children with the full range of disabilities, network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d) of the Act, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies;

(f) Establish cooperative partnerships with the parent training and information centers funded under section 682 of the Act;

(g) Be designed to meet the specific needs of families who experience significant isolation from available sources of information and support; and

(h) Annually report to the Secretary on—

(1) The number of parents to whom it provided information and training in the most recently concluded fiscal year; and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities.

The Secretary intends to fund a maximum of ten awards.

Competitive Priorities: Within this absolute priority, we will give preference to applications under 34 CFR 75.105(c)(2)(i) that meet one or both of the following competitive priorities:

The Secretary awards 20 points to an application submitted by a local parent organization that has a board of directors, the majority of whom are parents of children with disabilities, from the community to be served.

The Secretary awards 5 points to an application that proposes to provide services to one or more Empowerment Zones or Enterprise Communities that are designated within the areas served by projects. To meet this priority an applicant must indicate that it will:

(a) Design a program that includes special activities focused on the unique needs of one or more Empowerment Zones or Enterprise Communities; or

(b) Devote a substantial portion of program resources to providing services within, or meeting the needs of residents of these zones and communities.

As appropriate, the proposed project under IDEA must contribute to the strategic plan of the Empowerment Zones or Enterprise Communities and be made an integral component of the Empowerment Zone or Enterprise Community activities. A list of areas that have been selected as Empowerment Zones or Enterprise Communities is included in the application package.

In addition, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and

advancing in employment qualified individuals with disabilities in the project.

For purposes of these competitive preferences, applicants can be awarded up to a total of 30 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting all of these competitive preferences could earn a maximum total of 130 points.

Eligible Applicants: Local parent organizations are defined in section 682(g) and 683(c) of IDEA. According to section 682(g), a parent organization is a private nonprofit organization (other than an institution of higher education) that (a) has a board of directors, (1) the parent and professional members of which are broadly representative of the population to be served, (2) the majority of whom are parents of children with disabilities, and (3) that includes individuals with disabilities and individuals working in the fields of special education, related services, and early intervention; or (b) has a membership that represents the interests of individuals with disabilities and has established a special governing committee that meets requirements of paragraph (a) and a memorandum of understanding between this special governing committee and the board of directors of the organization that clearly outlines the relationship between the board and the committee and the decision making responsibilities and authority of each. According to section 683(c), local parent organizations are parent organizations that must meet one of the following criteria—

(a) Have a board of directors the majority of whom are from the community to be served; or

(b) Have as part of its mission, serving the interests of individuals with disabilities from such community; and have a special governing committee to administer the project, a majority of the members of which are individuals from such community.

Examples of administrative responsibilities include controlling the use of the project funds, and hiring and managing project personnel.

Project Period: Up to 36 months.

Project Award: Projects will not be funded in excess of $100,000 for any single budget period of 12 months.

Page Limits: The maximum page limit for this priority is 30 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

For Applications Contact

Education Publications Center (ED Pubs), PO Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov).

For Further Information Contact: Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW, room 3317, Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 205–9817.

If you use a TDD you may call the TDD number: (202) 205–8953.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Department as listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Intergovernmental Review

All programs in this notice (except for Research and Innovative) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for those programs.

Available Funds

The Administration has requested funds for these programs for Fiscal Year 2000. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the fiscal year, if Congress appropriates funds for these programs.

BILLING CODE 4000–01–P

INDIVIDUALS WITH DISABILITIES EDUCATION ACT
APPLICATION NOTICE FOR FISCAL YEAR 2000

CFDA No. and Name	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum Award (per year)*	Project Period	Page Limit**	Estimated Number of Awards
84.324B Student Initiated Research Projects	09/13/99	02/04/00	11/13/00	$20,000	Up to 12 mos.	25	12
84.324C Field Initiated Research Projects	09/13/99	12/10/99	02/08/00	$180,000	***Up to 60 mos.	50	14
84.324N Initial Career Awards	09/13/99	12/10/99	02/08/00	$75,000	Up to 36 mos.	30	4
84.324M Model Demonstration Projects for Children with Disabilities	09/13/99	11/29/99	01/28/00	$150,000	Up to 48 mos.	40	14
84.324R Outreach Projects for Children with Disabilities	09/13/99	12/03/99	02/01/00	$150,000	Up to 36 mos.	40	21
84.324P Research Institute to Enhance the Role of Special Education and Children with Disabilities in Education Policy Reform	09/13/99	05/19/00	07/18/00	$700,000	Up to 60 mos.	70	1
84.324W Improving Post-School Outcomes: Identifying and Promoting What Works	09/13/99	11/13/99	01/12/00	$500,000	Up to 60 mos.	60	1
84.325A Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, and Children with Low-Incidence Disabilities	09/03/99	10/15/99	12/14/99	$300,000	Up to 60 mos.	40	33
84.325D Preparation of Leadership Personnel	09/03/99	10/15/99	12/14/99	$200,000	Up to 48 mos.	40	13
84.325E Preparation of Personnel in Minority Institutions	09/03/99	10/15/99	12/15/99	$200,000	Up to 48 mos.	40	16
84.325H Improving the Preparation of Personnel to Serve Children with High-Incidence Disabilities	09/03/99	11/12/99	01/11/00	$200,000	Up to 36 mos.	40	31
84.326C Projects for Children Who are Deaf-Blind	09/13/99	01/07/00	03/07/00	$550,000	Up to 36 mos.	50	1
84.326M Outreach Services to Minority Entities to Expand Research Capacity	09/13/99	01/07/00	03/07/00	$1,000,000	Up to 60 mos.	75	1

CFDA No. and Name	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum Award (per year)*	Project Period	Page Limit**	Estimated Number of Awards
84.327A Steppingstones of Technology Innovation for Students with Disabilities	09/13/99	12/10/99	02/08/00				11
Phase 1 and 2				$200,000	Up to 24 mos.	40	
Phase 3				$300,000	Up to 36 mos.	40	
84.327D Dramatic and Theatrical Experiences for Individuals Who Are Deaf or Hard of Hearing	09 13//99	11/13/99	01/12/00	$800,000	Up to 60 mos.	50	1
84.327H Research on Educational Captioning	09/13/99	12/03/99	02/08/00	$125,000	Up to 36 mos.	50	2
84.327J Video Description	09/13/99	02/18/00	04/18/00	$200,000	Up to 36 mos.	50	4
84.327P Closed Captioned Sports Programs	09/13/99	02/11/00	04/11/00	$100,000	Up to 36 mos.	50	5
84328C Community Parent Resource Centers	09/13/99	03/03/00	05/02/00	$100,000	Up to 36 mos.	30	10

*The Secretary rejects and does not consider an application that proposes a budget exceeding the amount listed for each priority for any single budget period of 12 months. ** Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the "Page Limit" requirements included under each priority in this notice. The Secretary rejects and does not consider an application that does not adhere to this requirement. ***The majority of projects will be funded for up to 36 months. Only in exceptional circumstances will projects be funded for more than 36 months, up to a maximum of 60 months.

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Note: The official version of this document is the document published in the **Federal Register** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo/nara/index.html

Dated: August 23, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–22359 Filed 8–27–99; 8:45 am]

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Federal Register

Monday
August 30, 1999

Part V

Department of the Interior

Fish and Wildlife Service

Migratory Bird Hunting; Environmental Impact Statement on White Goose Management; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Hunting; Environmental Impact Statement on White Goose Management; Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service or ''we'') is issuing this notice to invite public participation in the scoping process for preparing an Environmental Impact Statement (EIS) that considers a range of management alternatives aimed at addressing population expansion of lesser snow geese, Ross' geese, and greater snow geese (white geese). This notice invites further public participation in the scoping process, identifies the location, date, and time of public scoping meetings, and identifies the Service official to whom questions and comments may be directed.

DATES: Written comments regarding EIS scoping should be submitted by November 22, 1999, to the address below. Dates for nine public scoping meetings are identified in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Written comments should be sent to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, 4401 N. Fairfax Dr., Suite 634—Arlington, VA 22203. Alternatively, comments may be submitted electronically to the following address: white—goose—eis@fws.gov. The public may inspect comments during normal business hours in Room 634 '' Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Locations for nine public scoping meetings are identified in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Andrew, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–1714, or James Kelley, Office of Migratory Bird Management (703) 358–1964.

SUPPLEMENTARY INFORMATION: On May 13, 1999, we published a Notice of Intent to prepare an EIS on white goose management (64 FR 26268). This action is in response to population expansion of white geese, which has resulted in habitat degradation in certain breeding, migration, and/or wintering areas of the three species of geese involved.

Lesser Snow Geese and Ross' Geese

We believe that the combined population of lesser snow geese and Ross' geese in the mid-continent region has exceeded the long-term carrying capacity of its breeding habitat and must be reduced. These geese have become seriously injurious to their arctic and subarctic habitat and habitat important to other migratory birds. We believe that population reduction measures are necessary to prevent further habitat destruction and to protect the remaining habitat upon which numerous wildlife species depend. The Arctic Goose Habitat Working Group estimated that the combined population of lesser snow geese and Ross' geese in the mid-continent region should be reduced by 50% by 2005 (Batt 1997). That would suggest a reduction from the 1999 winter index of approximately 2.8 million birds to approximately 1.4 million birds.

Greater Snow Geese

The greater snow goose population has expanded from less than 50,000 birds in the late 1960s to approximately 700,000 today. With a growth rate of about 9% per year, the population is expected to reach 1,000,000 by 2002 and 2,000,000 by 2010 (Batt 1998). While researchers have not documented the damage to the breeding habitat of greater snow geese to the same degree as the mid-continent white geese, high populations of greater snow geese are negatively impacting natural marshes in the St. Lawrence estuary and some coastal marshes of the Mid-Atlantic U.S (Batt 1998). The Arctic Goose Habitat Working Group recommended that the population be stabilized by the year 2002 at between 800,000 to 1,000,000 birds (Batt 1998). This strategy is intended to prevent the destruction of arctic habitat that is likely to occur if the population exceeds the carrying-capacity of breeding areas.

Alternatives

We are considering the following alternatives as a result of public comments we received previously. After the scoping process, we will develop the alternatives to be included in the EIS and base them on the mission of the Service and comments received during scoping. We are soliciting your comments on issues, alternatives, and impacts to be addressed in the EIS.

A. No Action Alternative

Under the No Action Alternative, no additional regulatory methods or direct population control strategies would be authorized. Existing white goose hunting regulations would remain in place.

B. New Regulatory Alternatives (Proposed Action)

This alternative seeks to provide new regulatory options to wildlife management agencies that will increase the harvest of white geese above that which results from existing hunting frameworks. This approach may include legalization of additional hunting methods such as electronic calls, unplugged shotguns, and expanded shooting hours. This alternative also includes establishment of a conservation order in the U.S. to reduce and/or stabilize white goose populations. A conservation order would authorize taking of white geese after the normal framework closing date of March 10, through August 31.

The intent of this alternative is to significantly reduce or stabilize white goose populations without threatening their long-term health. We are confident that reduction or stabilization efforts will not result in populations falling below either the lower management thresholds established by Flyway Councils, or the North American Waterfowl Management Plan population objectives. Monitoring and evaluation programs are in place to estimate population sizes and will be used to prevent over-harvest of these populations.

C. Direct Population Control on Wintering and Migration Areas in the U.S.

This alternative would involve direct population control strategies such as trapping and culling programs, market hunting, or other general strategies that would result in the killing of white geese on migration and/or wintering areas in the U.S. Some of these types of control measures could involve disposal of large numbers of carcasses.

D. Seek Direct Population Control on Breeding Grounds by Canada

This alternative, if successful, would involve direct population control strategies, such as trapping and culling programs, market hunting, or other general strategies, that would result in killing of white geese on breeding colonies in Canada. Some of these types of control measures could involve disposal of large numbers of carcasses. We do not have the authority to implement direct population control measures on migration or breeding areas in Canada. Therefore, this alternative would require extensive consultation with Canada in order to urge implementation of control measures on breeding areas. Such measures may or

may not involve active U.S. participation.

Issue Resolution and Environmental Review

The primary issue to be addressed during the scoping and planning process for the EIS is to determine which management alternatives for the control of white goose populations will be analyzed. We will prepare a discussion of the potential effect, by alternative, which will include the following areas:

(1) White goose populations and their habitats.

(2) Other bird populations and their habitats.

(3) Effects on other species of flora and fauna.

(4) Socioeconomic effects.

Environmental review of the management action will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA), as appropriate. This Notice is being furnished in accordance with 40 CFR 1501.7, to obtain suggestions and information from other agencies, tribes, and the public on the scope of issues to be addressed in the EIS. A draft EIS should be available to the public in the winter of 2000.

Public Scoping Meetings

Nine public scoping meetings will be held on the following dates at the indicated locations and times:

1. September 29, 1999; Pomona, NJ at the Richard Stockton College of New Jersey, A Wing Lecture Hall, Jimmie Leeds Road, 7 p.m. to 9:30 p.m.

2. September 30, 1999; Dover, DE at the Richardson and Robbins Auditorium, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, 7 p.m. to 9:30 p.m.

3. October 3, 1999; Sacramento, CA at the Auditorium, Resource Building, 1416 Ninth St., 3 p.m. to 5:30 p.m.

4. October 5, 1999; Rosenberg, TX at the Texas Agricultural Extension Service Building, 1436 Band Road, 7 p.m. to 9:30 p.m.

5. October 6, 1999; Baton Rouge, LA at the Louisiana Room, First Floor, Louisiana Department of Wildlife and Fisheries Building, 2000 Quail Drive, 7 p.m. to 9:30 p.m.

6. October 12, 1999; Bismarck, ND at the North Dakota Game and Fish Department Auditorium, 100 N. Bismarck Expressway, 7 p.m. to 9:30 p.m.

7. October 13, 1999; Bloomington, MN at the Best Western Thunderbird Hotel and Convention Center, 2201 East 78th Street, 7 p.m. to 9:30 p.m.

8. October 14, 1999; Kansas City, MO at the Holiday Inn Sports Complex, 4011 Blue Ridge Cutoff, 7 p.m. to 9:30 p.m.

9. October 21, 1999; Washington, DC in the Auditorium of the Department of the Interior Building, 1849 C Street NW, 9 a.m. to 11:30 a.m.

Meeting participants may choose to submit oral and/or written comments on the EIS scoping process. To facilitate planning, we request that individuals or organizations that desire to submit oral comments at meetings to send us their name and the meeting location at which comments will be submitted. Name and meeting location information should be sent to the location indicated under the **ADDRESSES** caption. However, submission of names prior to a particular meeting is not required in order to present oral comments at any meeting.

Written comments may also be submitted by November 22, 1999, to the location indicated under the **ADDRESSES** caption. Alternatively, comments may be submitted electronically by November 22, 1999, to the following email address: white__goose__eis@fws.gov.

References Cited

Batt, B.D.J., editor. 1997. Arctic ecosystems in peril: report of the Arctic Goose Habitat Working Group. Arctic Goose Joint Venture Special Publication. U. S. Fish and Wildlife Service, Washington, DC and Canadian Wildlife Service, Ottawa, Ontario. 120pp.

Batt, B.D.J., editor. 1998. The greater snow goose: report of the Arctic Goose Habitat Working Group. Arctic Goose Joint Venture Special Publication. U. S. Fish and Wildlife Service, Washington, DC and Canadian Wildlife Service, Ottawa, Ontario. 88pp.

Authorship

The primary author of this Notice is James R. Kelley, Jr., Office of Migratory Bird Management.

Dated: August 24, 1999.

Paul R. Schmidt,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–22382 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Monday
August 30, 1999

Part VI

Department of the Interior

National Park Service

36 CFR Part 51
Concession Contracts; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Notice was given in Part III of the **Federal Register** dated June 30, 1999, 64 FR 35516 to 35536, that the National Park Service proposes to amend existing regulations on concession contracts to comply with the requirements of Title IV of the National Parks Omnibus Management Act of 1998, and is soliciting written comments from all interested parties on or before August 30, 1999. However, it has been determined that it would be in the best interest of all interested parties and the United States to provide an additional period of time within which to submit written comments.

DATES: Written comments on the proposed rule must be received on or before October 15, 1999.

ADDRESSES: Written comments should be sent to the Concession Program Manager, National Park Service, 1849 ''C'' Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Wendelin Mann, Concession Program, National Park Service, 1849 ''C'' Street, NW, Washington, DC 20240 (202/565–1219).

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–22603 Filed 8–27–99; 8:45 am]

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H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the ''Thomas S. Foley United States Courthouse'', and the plaza at the south entrance of such building and courthouse as the ''Walter F. Horan Plaza''. (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
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H.R. 1568/P.L. 106–50
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H.R. 2465/P.L. 106–52
Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53

Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54

For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55

To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

Last List August 18, 1999

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1–199	(869–038–00048–2)	29.00	Apr. 1, 1999
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869–038–00053–9)	37.00	Apr. 1, 1999
141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–038–00059–8)	24.00	Apr. 1, 1999
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	50.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–8)	35.00	Apr. 1, 1999
1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
22 Parts:			
1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
300–End	(869–038–00069–5)	32.00	Apr. 1, 1999
23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–038–00075–0)	18.00	Apr. 1, 1999
25	(869–038–00076–8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[7] Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869–038–00085–7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
28 Parts:			
0-42	(869–034–00098–3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0–99	(869–034–00100–9)	26.00	July 1, 1998
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–034–00102–1)	40.00	[8] July 1, 1999
900–1899	(869–034–00103–3)	20.00	July 1, 1998
1900–1910 (§§ 1900 to 1910.999)	(869–034–00104–1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869–034–00105–0)	27.00	July 1, 1998
1911–1925	(869–034–00106–8)	17.00	July 1, 1998
1926	(869–034–00107–6)	30.00	July 1, 1998
1927–End	(869–034–00108–4)	41.00	July 1, 1998
30 Parts:			
1–199	(869–034–00109–2)	33.00	July 1, 1998
*200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–034–00111–4)	33.00	July 1, 1998
31 Parts:			
0–199	(869–038–00112–8)	21.00	July 1, 1999
200–End	(869–034–00113–1)	46.00	July 1, 1998
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–034–00114–9)	47.00	July 1, 1998
191–399	(869–034–00115–7)	51.00	July 1, 1998
400–629	(869–034–00116–5)	33.00	July 1, 1998
630–699	(869–034–00117–3)	22.00	[4] July 1, 1998
700–799	(869–034–00118–1)	26.00	July 1, 1998
800–End	(869–034–00119–0)	27.00	July 1, 1998
33 Parts:			
1–124	(869–034–00120–3)	29.00	July 1, 1998
125–199	(869–034–00121–1)	38.00	July 1, 1998
200–End	(869–034–00122–0)	30.00	July 1, 1998
34 Parts:			
1–299	(869–034–00123–8)	27.00	July 1, 1998
300–399	(869–034–00124–6)	25.00	July 1, 1998
400–End	(869–034–00125–4)	44.00	July 1, 1998
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–034–00127–1)	20.00	July 1, 1998
200–299	(869–034–00128–9)	21.00	July 1, 1998
300–End	(869–034–00129–7)	35.00	July 1, 1998
37	(869–034–00130–1)	27.00	July 1, 1998
38 Parts:			
0–17	(869–034–00131–9)	34.00	July 1, 1998
18–End	(869–034–00132–7)	39.00	July 1, 1998
39	(869–034–00133–5)	23.00	July 1, 1998
40 Parts:			
1–49	(869–034–00134–3)	31.00	July 1, 1998
50–51	(869–034–00135–1)	24.00	July 1, 1998
52 (52.01–52.1018)	(869–034–00136–0)	28.00	July 1, 1998
52 (52.1019–End)	(869–034–00137–8)	33.00	July 1, 1998
53–59	(869–034–00138–6)	17.00	July 1, 1998
60	(869–034–00139–4)	53.00	July 1, 1998
61–62	(869–034–00140–8)	18.00	July 1, 1998
63	(869–034–00141–6)	57.00	July 1, 1998
64–71	(869–034–00142–4)	11.00	July 1, 1998
72–80	(869–034–00143–2)	36.00	July 1, 1998
81–85	(869–034–00144–1)	31.00	July 1, 1998
86	(869–034–00144–9)	53.00	July 1, 1998
87-135	(869–034–00146–7)	47.00	July 1, 1998
136–149	(869–034–00147–5)	37.00	July 1, 1998
150–189	(869–034–00148–3)	34.00	July 1, 1998
190–259	(869–034–00149–1)	23.00	July 1, 1998
260–265	(869–034–00150–9)	29.00	July 1, 1998
266–299	(869–034–00151–3)	33.00	July 1, 1998
300–399	(869–034–00152–1)	26.00	July 1, 1998
400–424	(869–034–00153–0)	33.00	July 1, 1998
425–699	(869–034–00154–8)	42.00	July 1, 1998
700–789	(869–034–00155–6)	41.00	July 1, 1998
790–End	(869–034–00156–4)	22.00	July 1, 1998
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–034–00157–2)	13.00	July 1, 1998
101	(869–034–00158–1)	37.00	July 1, 1998
102–200	(869–034–00158–9)	15.00	July 1, 1998
201–End	(869–034–00160–2)	13.00	July 1, 1998
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–034–00166–1)	48.00	Oct. 1, 1998
45 Parts:			
1–199	(869–034–00167–0)	30.00	Oct. 1, 1998
200–499	(869–034–00168–8)	18.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	29.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
40–69	(869–034–00182–3)	24.00	Oct. 1, 1998
70–79	(869–034–00183–1)	37.00	Oct. 1, 1998
80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
7–14	(869–034–00189–1)	32.00	Oct. 1, 1998
15–28	(869–034–00190–4)	33.00	Oct. 1, 1998
29–End	(869–034–00191–2)	24.00	Oct. 1, 1998
49 Parts:			
1–99	(869–034–00192–1)	31.00	Oct. 1, 1998
100–185	(869–034–00193–9)	50.00	Oct. 1, 1998
186–199	(869–034–00194–7)	11.00	Oct. 1, 1998
200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–034–00196–3)	54.00	Oct. 1, 1998
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
1200–End	(869–034–00198–0)	13.00	Oct. 1, 1998
50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998
600–End	(869–034–00201–3)	33.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–038–00047–4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.